

The effectiveness of the race and disability public sector equality duties as positive legal duties and legal accountability tools
The appendices: September 2015

The effectiveness of the race and disability public sector equality duties as positive legal duties and legal accountability tools

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Appendix 1: The general race, disability and public sector equality duties

1. The general Race Equality Duty (RED)

Section 2 of the Race Relations (Amendment) Act 2000 amended section 71 of the Race Relations Act 1976. The amended section 71 also made provision for orders to ensure the ‘better performance’ of section 71(1) by public bodies. Sections 71 (1) – (7) is set out below in its entirety.¹ Section 71 was in force between April 2001 and April 2011 (10 years).

Specified authorities: general statutory duty

(1) Every body or other person specified in Schedule 1A or of a description falling within that Schedule shall, in carrying out its functions, have due regard to the need—(a) to eliminate unlawful racial discrimination; and (b) to promote equality of opportunity and good relations between persons of different racial groups.

71(2) The [Minister] may by order impose, on such persons falling within Schedule 1A as he considers appropriate, such duties as he considers appropriate for the purpose of ensuring the better performance by those persons of their duties under subsection (1).

71(3) An order under subsection (2)— (a) may be made in relation to a particular person falling within Schedule 1A, any description of persons falling within that Schedule or every person falling within that Schedule; (b) may make different provision for different purposes.

71(4) Before making an order under subsection (2), the [Minister] shall consult the Commission.

71 (5) The [Minister] may by order amend Schedule 1A; but no such order may extend the application of this section unless the [F252Minister] considers that the extension relates to a person who exercises functions of a public nature.

71(6) An order under subsection (2) or (5) may contain such incidental, supplementary or consequential provision as the [Minister] considers appropriate (including provision amending or repealing provision made by or under this Act or any other enactment).

¹ The term ‘Minister’, which appears in square brackets below was substituted for the term ‘Secretary of State’ in 2007 by way of amendments introduced by the Transfer of Functions (Equality) Order 2007(S.I. 2007/2914), art. 8, Sch. para. 10(d).

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71(7) This section is subject to section 71A and 71B and is without prejudice to the obligation of any person to comply with any other provision of this Act.²

2. The general Disability Equality Duty (DED)

Section 3 of the Disability Discrimination Act 2005 amended the Disability Discrimination Act 1995 by introducing the new general Disability Equality Duty (DED) as section 49A of the 1995 Act. Section 49B, also introduced by the 2005 Act, defined which bodies would be subject to section 49A. Section 49C identified bodies that would be excluded from compliance with section 49C whilst section 49D set out provisions in relation to the 'better performance' of section 49A. Sections 49A, 49B, 49C and 49D are set out below. The general DED was in force between December 2006 and April 2011 (just over 4.25 years).

Section 49A General duty

(1) Every public authority shall in carrying out its functions have due regard to— (a) the need to eliminate discrimination that is unlawful under this Act; (b) the need to eliminate harassment of disabled persons that is related to their disabilities; (c) the need to promote equality of opportunity between disabled persons and other persons; and (d) the need to take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons; (e) the need to promote positive attitudes towards disabled persons; and (f) the need to encourage participation by disabled persons in public life.

(2) Subsection (1) is without prejudice to any obligation of a public authority to comply with any other provision of this Act.

Section 49B Meaning of "public authority" in Part 5A

(1) In this Part "public authority"— (a) includes any person certain of whose functions are functions of a public nature; but (b) does not include— (i) any person mentioned in section 21B(3); (ii) the Scottish Parliament; or (iii) a person, other than the Scottish Parliamentary Corporate Body, exercising functions in connection with proceedings in the Scottish Parliament.

² Section 71A – entitled general statutory duty: special cases –excluded certain immigration and nationality functions from section 71(1) (b). Section 71B – entitled general statutory duty: Scotland and Wales – qualified the power of the Secretary of State in relation to the application of the general duty to Scotland and Wales.

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(2) In relation to a particular act, a person is not a public authority by virtue only of subsection (1)(a) if the nature of the act is private.

(3) Regulations may provide for a person of a prescribed description to be treated as not being a public authority for the purposes of this Part.

Section 49C Exceptions from section 49A(1)

(1) Section 49A(1) does not apply to— (a) a judicial act (whether done by a court, tribunal or other person); or (b) an act done on the instructions, or on behalf, of a person acting in a judicial capacity.

(2) Section 49A(1) does not apply to any act of, or relating to, making or approving an Act of Parliament, an Act of the Scottish Parliament or an Order in Council.

(3) Section 49A(1)(c) and (d) do not apply to—

(a) an act done in connection with recruitment to any of the naval, military or air forces of the Crown; or (b) an act done in relation to a person in connection with service by him as a member of any of those forces.

(4) Regulations may provide for section 49A(1)(a), (b), (c) or (d) not to apply to an act of a prescribed description.

Section 49D Power to impose specific duties

(1) The Secretary of State may by regulations impose on a public authority, other than a relevant Scottish authority or a cross-border authority, such duties as the Secretary of State considers appropriate for the purpose of ensuring the better performance by that authority of its duty under section 49A(1).

(2) The Secretary of State may by regulations impose on a cross-border authority such duties as the Secretary of State considers appropriate for the purpose of ensuring the better performance by that authority of its duty under section 49A(1) so far as relating to such of its functions as are not Scottish functions.

(3) The Scottish Ministers may by regulations impose on a relevant Scottish authority such duties as the Scottish Ministers consider appropriate for the purpose of ensuring the better performance by that authority of its duty under section 49A(1).

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(4) The Scottish Ministers may by regulations impose on a cross-border authority such duties as the Scottish Ministers consider appropriate for the purpose of ensuring the better performance by that authority of its duty under section 49A(1) so far as relating to its Scottish functions.

(5) Before making regulations under any of subsections (1) to (4), the person making the regulations shall consult the Disability Rights Commission.

(6) Before making regulations under subsection (1) or (2) in relation to functions exercisable in relation to Wales by a public authority that is not a relevant Welsh authority, the Secretary of State shall consult the National Assembly for Wales.

(7) The Secretary of State shall not make regulations under subsection (1) or (2) in relation to a relevant Welsh authority except with the consent of the National Assembly for Wales.

(8) Before making regulations under subsection (2), the Secretary of State shall consult the Scottish Ministers.

(9) Before making regulations under subsection (4), the Scottish Ministers shall consult the Secretary of State.

[Section 49D (10)]³

3. The general Public Sector Equality Duty (PSED)

Section 149 of the Equality Act 2010 introduced the general Public Sector Equality Duty (PSED). Section 149, came into force in April 2011 and remains in force; is set out below.⁴

Public sector equality duty

(1) A public authority must, in the exercise of its functions, have due regard to the need to— (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; (b) advance equality of opportunity between persons who

³ Section 49D (10) is not set out here, as it is not directly relevant to this study. Section 49D (10) defines what a relevant Scottish authority means.

⁴ Section 149 (9) identifies that Schedule 18 (exceptions) has effect. Section 150 states that listed bodies are subject to section 149(1) and section 151 enables the public bodies subject to section 149(1) to be amended. Section 153 and 154 provide for specific duties to be imposed.

share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

(2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).

(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to— (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

(4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

(5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to— (a) tackle prejudice, and (b) promote understanding.

(6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

(7) The relevant protected characteristics are— age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation.

(8) A reference to conduct that is prohibited by or under this Act includes a reference to— (a) a breach of an equality clause or rule; (b) a breach of a non-discrimination rule.

Appendix 2: Primary legislation [1976 – 2014] – the RED, DED, the PSED, enforcement and compliance provisions⁵					
Act – short title	First enacted⁶	Important amendments⁷	Final repeal⁸	Title of section	Section(s)⁹
The Race Relations Act 1976 ¹⁰	1976		2006, 2007	Establishment and duties of Commission	43
The Race Relations Act 1976	1976, 1977	1994, 1995, 1996, 1997, 1998	2000, 2001 ¹¹	Local authorities: general statutory duty	71
The Race Relations Act 1976	2000, 2001	2000, 2001, 2002, 2003, 2006, 2007	2010, 2011	Specified authorities: general statutory duty	71(1) ¹²
The Race Relations Act 1976	2000, 2001	2000, 2001	2010, 2011	Specified authorities: general statutory duty	71(2) ¹³
The Race Relations Act 1976	2000, 2001,	2000, 2001, 2002, 2003	2010, 2011	General statutory duty: special cases	71A
The Race Relations Act 1976	2000, 2001	2000, 2001, 2006, 2007	2010, 2011	General statutory duty: Scotland and Wales	71B
The Race Relations Act 1976	2000, 2001	2000, 2001	2006, 2007	General statutory duty: codes of practice	71C

⁵ This appendix lists key acts of parliament or primary legislation. Sections referenced are those that set out the equality duties and the duties of the equality commissions.

⁶ First enacted reflects when the provision was enacted in an act of parliament or an act of parliament was amended by way of secondary legislation.

⁷ Amendments identifies the years when parts of the section were the subject of substantive amendments.

⁸ Final repeal first lists the year that primary legislation was enacted to repeal the relevant section and then lists the year the repeal of the section came into force.

⁹ Section 2 of the Race Relations (Amendment) Act 2000 amended section 71 of the Race Relations Act 1976 so the sections of the RED are listed under the 1976 Act.

¹⁰ *Race Relations Act 1976. Chapter 74.* (1976) London: The Stationery Office

¹¹ The local authorities: general statutory duty was replaced by the Specified authorities: general statutory duty.

¹² Section 71(1) set out the general RED

¹³ Section 71(2) set out provisions enabling the Secretary of State to impose duties which subsequently were called specific equality duties.

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The Race Relations Act 1976	2000, 2001	2000, 2001	2006, 2007	General statutory duty: compliance notices	71D
The Race Relations Act 1976	2000, 2001	2000, 2001	2006, 2007	Enforcement of compliance notices	71E
The Race Relations (Amendment) Act 2000 ¹⁴	2000, 2001	See above	2010, 2011	Specified authorities: general statutory duty	2
The Disability Rights Commission Act 1999 ¹⁵	1999		2006, 2007	The Disability Rights Commission	1
The Disability Rights Commission Act 1999	1999		2006, 2007	Codes of Practice	9
The Disability Discrimination Act 1995 ¹⁶	2005, 2006		2010, 2011	General duty	49A
The Disability Discrimination Act 1995	2005, 2006		2010, 2011	Meaning of “public authority” in Part 5A	49B
The Disability Discrimination Act 1995	2005, 2006		2010, 2011	Exceptions from section 49A(1)	49C
The Disability Discrimination Act 1995	2005, 2006		2006, 2007	Power to impose specific duties	49D
The Disability Discrimination Act 1995	2005, 2006		2006, 2007	Duties under section 49D: compliance notices	49E

¹⁴ *Race Relations (Amendment) Act 2000. Chapter 34.*(2000) London: The Stationery Office. The Race Relations(Amendment) Act 2000 amended the Race Relations Act 1976 so relevant sections of the RED are listed under the RRA 1976

¹⁵ *Disability Rights Commission Act 1999. Chapter 17.*(1999) London: The Stationery Office

¹⁶ *Disability Discrimination Act 1995. Chapter 50.*(1995) London: The Stationery Office

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The Disability Discrimination Act 1995	2005, 2006		2006, 2007	Enforcement of compliance notices	49F
The Disability Discrimination Act 1995	2005, 2006		2006, 2007	Codes of practice prepared by the Secretary of State.	53
The Disability Discrimination Act 2005 ¹⁷	2005, 2006		2010, 2011	Duties of public authorities	3
Equality Act 2006 ¹⁸	2006		N/A	General duty	3
Equality Act 2006	2006	2010	N/A	Equality and diversity	8
Equality Act 2006	2006, 2007	2013	N/A	Groups	10
Equality Act 2006	2006, 2007		N/A	Information, advice, etc.	13
Equality Act 2006	2006, 2007		N/A	Codes of practice	14
Equality Act 2006	2006, 2007		N/A	Judicial review and other legal proceedings	30
Equality Act 2006	2006, 2007		N/A	Public sector duties: assessment	31
Equality Act 2006	2006, 2007		N/A	Public sector duties: compliance notice	32
Equality Act 2006	2006, 2007		N/A	Consequential amendments	41
Equality Act 2006	2006, 2007		N/A	Repeals	91
Equality Act 2006	2006, 2007		N/A	Commencement	93
Equality Act 2006	2006, 2007		N/A	Inquiries, investigations and assessments	Schedule 2

¹⁷ *Disability Discrimination Act 2000. Chapter 13.*(2000) London: The Stationery Office

¹⁸ *Equality Act 2006 Chapter 3.*(2006) London: The Stationery Office

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Act – short title	First enacted⁶	Important amendments⁷	Final repeal⁸	Title of section	Section(s)⁹
Equality Act 2006	2006, 2007		N/A	Amendments consequential on part 1	Schedule 3 paras 30, 31, 48, 49
Equality Act 2006	2006, 2007		N/A	Repeals	Schedule 4
Equality Act 2010 ¹⁹	2010, 2011		N/A	Public sector equality duty	149
Equality Act 2010	2010, 2011		N/A	Public authorities and public functions	150
Equality Act 2010	2010, 2011		N/A	Power to specify public authorities	151
Equality Act 2010	2010, 2011		N/A	Power to specify public authorities: consultation and consent	152
Equality Act 2010	2010, 2011		N/A	Power to impose specific duties	153
Equality Act 2010	2010, 2011		N/A	Power to impose specific duties: cross-border authorities	154
Equality Act 2010	2010, 2011		N/A	Power to impose specific duties: supplementary	155
Equality Act 2010	2010, 2011		N/A	Enforcement	156
Equality Act 2010	2010, 2011		N/A	Interpretation	157
Equality Act 2010	2010, 2011		N/A	Public sector equality duty: exceptions	Schedule 18
Equality Act 2010	2010, 2011		N/A	Public authorities	Schedule 19
Equality Act 2010	2010, 2011		N/A	Amendments	Schedule 26

¹⁹ *Equality Act 2010 Chapter 15.* (2010) London: The Stationery Office

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Act – short title	First enacted⁶	Important amendments⁷	Final repeal⁸	Title of section	Section(s)⁹
Equality Act 2010	2010, 2011		N/A	Repeals and revocations	Schedule 27

Appendix 3: Secondary legislation - the RED, DED, the PSED, enforcement, compliance and relevant statutory regulations, statutory orders and statutory codes of practice [1976 – 2014] ²⁰				
Secondary legislation²¹	Year	Status²²	Short title of parent or other Act	Section(s)²³
Race Relations Act 1976 (General Statutory Duty) Order (S.I.2001/3457)	2001	In force (IF) until 2011	The Race Relations Act 1976	71(5)
Race Relations Act 1976 (Statutory Duties) Order (S.I.2001/3458)	2001	IF until 2011	The Race Relations Act 1976	71(2), 71(3)
The Race Relations Act 1976 (General Statutory Duty: Code of Practice) Order 2002 (S.I. 2002/1425)	2002	IF until 2011	The Race Relations Act 1976	71(C.)
Code of Practice on the duty to promote race equality	2002	IF until 2011	The Race Relations Act 1976	71(C.)
The Race Relations Act 1976 (General Statutory Duty: Code Of Practice) (Scotland) Order 2002 (S.I. 2002/3111)	2002	IF until 2011	The Race Relations Act 1976	71(C.)
Race Relations Act 1976 (Statutory Duties) (Scotland) Order (S.I. 2002/62)	2002	IF until 2011	The Race Relations Act 1976	71(2), 71(3)
The Race Relations Act 1976 (Amendment) Regulations 2003 (S.I. 2003/1626)	2003	IF until 2011	<i>The European Communities Act 1972(a)</i> The Race Relations Act 1976	<i>Schedule 2</i> Various
Race Relations Act 1976 (Statutory Duties) Order (S.I.2003/3006)	2003	IF until 2011	The Race Relations Act 1976	71(2), 71(3)
Race Relations Act 1976 (General Statutory Duty) Order (S.I.2003/3007)	2003	IF until 2011	The Race Relations Act 1976	71(5)

²⁰ This appendix lists relevant statutory regulations or orders which commenced or amended the RED, DED and PSED. Before 2011, unless the regulation or order included Scotland in the title, the regulation or order applied to England and Wales. Most of provision set out in the Race Relations Act 1976 and the Disability Discrimination Act 1995 were repealed in October 2010 when much of the Equality Act 2010 came into force. However, the RED and DED remained in force until April 2011 when the PSED came into force. Until April 2011, transitional arrangements applied which effectively retained the legislative provisions that otherwise would have been repealed.

²¹ The statutory regulations or orders for England and Wales are listed first, those for Scotland and Wales are listed after the regulations for England.

²² IF means 'in force' NIF means 'not in force'.

²³ Only key sections of legislation relevant to the RED, DED and PSED have been referenced, most of these provisions were or are contained in the Race Relations Act 1976, the Disability Discrimination Act 1995, the Disability Rights Commission Act 1999, the Equality Act 2006 and the Equality Act 2010. Other key provisions appear in italics.

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Appendix 3: Secondary legislation - the RED, DED, the PSED, enforcement, compliance and relevant statutory regulations, statutory orders and statutory codes of practice [1976 – 2014] ²⁰				
Secondary legislation²¹	Year	Status²²	Short title of parent or other Act	Section(s)²³
Race Relations Act 1976 (Statutory Duties) (Scotland) Amendment (S.I.Order 2003/566)	2003	IF until 2011	The Race Relations Act 1976	71(2), 71(3)
Race Relations Act 1976 (Statutory Duties) Order (S.I.2004/3125)	2004	IF until 2011	The Race Relations Act 1976	71(2), 71(3)
Race Relations Act 1976 (General Statutory Duty) Order (S.I.2004/3127)	2004	IF until 2011	The Race Relations Act 1976	71(5)
Race Relations Act 1976 (Statutory Duties) (Scotland) Amendment Order (S.I.2004/521)	2004	IF until 2011	The Race Relations Act 1976	71(2), 71(3)
Race Relations Act 1976 (General Statutory Duty) Order (S.I.2006/2470)	2006	IF until 2011	The Race Relations Act 1976	71(5)
Race Relations Act 1976 (Statutory Duties) Order (S.I.2006/2471)	2006	IF until 2011	The Race Relations Act 1976	71(2), 71(3)
Race Relations Act 1976 (Statutory Duties) (Scotland) Amendment Order (S.I.2006/467)	2006	IF until 2011	The Race Relations Act 1976	71(2), 71(3)
The Disability Rights Commission Act 1999 Commencement No. 1 and Transitional Provision) Order (S.I.1999/2210)	1999	If until 2007	The Disability Rights Commission Act 1999	1
The Disability Discrimination Act 1995 (Amendment) Regulations 2003 (S.I. 2003/1673)	2003	IF until 2011	<i>The European Communities Act 1972(a)</i> The Disability Discrimination Act 2003	<i>Schedule 2</i> Various
The Disability Discrimination Act 2005 (Commencement No. 1) Order (S.I.2005/1696)	2005	IF until 2011	The Disability Discrimination Act 2005	2
The Disability Discrimination Act 2005 (Commencement No. 2) Order (S.I.2005/2774)	2005	IF until 2011	The Disability Discrimination Act 2005	2
The Disability Discrimination Code of Practice (Public Authorities) (Duty to Promote Equality) (Appointed Day)	2005	IF until 2011	The Disability Discrimination Act 2005	2

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Appendix 3: Secondary legislation - the RED, DED, the PSED, enforcement, compliance and relevant statutory regulations, statutory orders and statutory codes of practice [1976 – 2014] ²⁰				
Secondary legislation²¹	Year	Status²²	Short title of parent or other Act	Section(s)²³
Order 2005 (S.I. 2005/3340)				
The Disability Discrimination Code of Practice (Public Authorities) (Duty to Promote Equality, Scotland) (Appointed Day) Order 2006 (S.I. 2006/219)	2006	IF until 2011	The Disability Discrimination Act 2005	2
The Disability Discrimination (Public Authorities)(Statutory Duties) Regulations (S.I.2005/2996)	2005	IF until 2011	The Disability Discrimination Act 2005	2
The Duty to Promote Disability Equality: Statutory Code of Practice: England and Wales	2005	IF until 2011	The Disability Discrimination Act 2005	2
The Duty to Promote Disability Equality: Statutory Code of Practice: Scotland	2005	IF until 2011	The Disability Discrimination Act 2005	2
The Disability Rights Commission Act 1999 (Commencement No.3) Order (S.I. 2006/3189)	2006	If until 2007	The Disability Rights Commission Act 1999	Various
The Equality Act 2006 (Dissolution of Commissions and Consequential and Transitional Provisions) (Amendment) Order (S.I. 2007/3555)	2007	Implemented in 2007	Equality Act 2006	36, 37, 38
The Transfer of Functions (Equality) Order 2007 (S.I. 2007/2914)	2007	Implemented in 2007	<i>The Ministers of the Crown Act 1975(1)</i> <i>The European Communities Act 1972</i>	1 2(2)
The Equality Act 2010 (Commencement No. 4, Savings, Consequential, Transitional, Transitory and Incidental Provisions and Revocation) Order 2010 (S.I. 2010/2317)	2010	IF 2010	The Race Relations Act 1976 The Disability Discrimination Act	71 49(A)
The Equality Act 2010 (Statutory Duties)(Wales) Regulations (S.I.2011/1064)	2011	IF ongoing since April 2011	Equality Act 2010	153
Equality Act 2010 (Specific Duties) Regulations (S.I.2011/2260)	2011	IF ongoing since	Equality Act 2010	153

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Appendix 3: Secondary legislation - the RED, DED, the PSED, enforcement, compliance and relevant statutory regulations, statutory orders and statutory codes of practice [1976 – 2014] ²⁰				
Secondary legislation ²¹	Year	Status ²²	Short title of parent or other Act	Section(s) ²³
		September 2011		
Equality Act 2010 (Specific Duties) (Scotland) Regulations (S.I.2012/162)	2012	IF ongoing since May 2012	Equality Act 2010	153
The Equality Act 2006 (Dissolution of the Disability Committee) Order (S.I.2014/406)	2014	Implemented in 2014/15	Equality Act 2006	2, Schedule 1 part 5

Appendix 4: The Supreme Court and the Public Sector Equality Duty (PSED)

About this appendix

On 13th May 2015, the Supreme Court handed down a judgment in relation to three cases referred from the Court of Appeal.²⁴ The purpose of this appendix is not to review those judgments but instead to set out what the Supreme Court said the PSED required. This appendix sets out the questions that the Supreme Court posed for itself in relation to the PSED and also its decisions and comments.

The question in relation to the PSED posed by the Supreme Court

In *Hotak and others (Appellants) v London Borough of Southwark and another* [2015] UKSC 30, the Supreme Court asked itself three key questions, the third question focused on the PSED and determining priority need.²⁵ The third question was: *‘What effect, if any, does the public sector equality duty under section 149 of the 2010 Act have on the determination of priority need under section 189 of the 1996 Act in the case of an applicant with a disability or any other protected characteristic?’* The Supreme Court’s answers to that question are cited in this appendix. The question was focused on the PSED, housing and priority need but the Supreme Court’s determination has wider application than just housing or priority need.

There were four interveners – the Equality and Human Rights Commission (EHRC), the housing and homelessness charities, Crisis and Shelter and the Secretary of State for Communities and Local Government. The extracts which follow are those related to the PSED in the judgment. It is interesting to note that whilst Mr Kanu’s appeal succeeded, and another of the three appeals might have succeeded had the grounds on which Kanu succeeded been argued in that case. However, the appeal would not have succeeded on

²⁴ *Hotak v Southwark LBC* [2013] EWCA Civ 515; *Kanu v London Borough of Southwark* [2014] EWCA Civ 1085; and *Johnson v Solihull MBC* [2013] EWCA Civ 752. Kanu is listed in appendix 10, table 1 as case 133. Neither Johnson nor Hotak were argued on PSED grounds before the Court of Appeal. Kanu was argued on PSED grounds before the Court of Appeal but the claimant was unsuccessful on PSED grounds though succeeded on other grounds.

²⁵ Paragraph 35 of the judgment: The three principal issues which have been discussed in these appeals are as follows: i) Does the assessment of whether an applicant is vulnerable for the purposes of section 189(1)(c) of the 1996 Act involve an exercise in comparability, and, if so, by reference to which group of people is vulnerability to be determined? ii) When assessing vulnerability, is it permissible to take into account the support and assistance which would be provided by a member of his family or household to an applicant if he were homeless? iii) What effect, if any, does the public sector equality duty under section 149 of the 2010 Act have on the determination of priority need under section 189 of the 1996 Act in the case of an applicant with a disability or any other protected characteristic?

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the PSED grounds argued despite the powerful comments made by the Supreme Court. **Key elements of the judgment and the conclusions have been highlighted in bold text.** Key equality duty cases are cited in paragraphs 73-76. Paragraph 74, confirms that the PSED is not a duty to achieve results but *'a duty "to have due regard to the need" to achieve the goals identified in paras (a) to (c) of section 149(1) of the 2010 Act.'* Paragraph 74 explains what sort of culture the PSED is intended to bring about.

Direct extracts from the judgment by the Supreme Court re the PSED [May 2015]

72. The complaint raised under the 2010 Act against the review in the Kanu case by Ms Mountfield QC is that it failed to comply with the equality duty in that Ms Emmanuel accorded insufficiently careful or critical scrutiny to Mr Kanu's disability, and to the consequences to him of the adverse decision that he was not vulnerable.

73. The equality duty has been the subject of a number of valuable judgments in the Court of Appeal. Explanations of what the duty involves have been given by **Dyson LJ (in relation to the equivalent provision in the Race Relations Act 1976) in Baker v Secretary of State for Communities and Local Government [2008] EWCA Civ 141, [2009] PTSR 809 , paras 30-31, Wilson LJ (in relation to section 49A of the Disability Discrimination Act 1995 , as inserted by section 3 of the Disability Discrimination Act 2005 , the predecessor of section 149 of the 2010 Act) in Pieretti v Enfield London Borough Council [2010] EWCA Civ 1104, [2011] PTSR 565 , paras 28 and 32, and McCombe LJ in Bracking v Secretary of State for Work and Pensions [2013] EWCA Civ 1345, [2014] Eq LR 40 , para 26 which pulls together various dicta, most notably those of Elias LJ in R (Hurley & Moore) v Secretary of State for Business, Innovation and Skills [2012] EWHC 201 (Admin) , paras 77-78 and 89.** I do not propose to quote those passages in extenso: they are not challenged in these appeals, and in my view, at least as at present advised, rightly so.

74. As Dyson LJ emphasised, the equality duty is "not a duty to achieve a result", but a duty "to have due regard to the need" to achieve the goals identified in paras (a) to (c) of section 149(1) of the 2010 Act. Wilson LJ explained that the Parliamentary intention behind section 149 was that there should "be a culture of greater awareness of the existence and legal consequences of disability". He went on to say in para 33 that the extent of the "regard" which must be had to the six aspects of the duty (now in subsections (1) and (3) of section 149 of the 2010 Act) must be what is "appropriate in all the circumstances". Lord Clarke

suggested in argument that this was not a particularly helpful guide and I agree with him. However, in the light of the word “due” in section 149(1), I do not think it is possible to be more precise or prescriptive, given that the weight and extent of the duty are highly fact-sensitive and dependant on individual judgment.

75. As was made clear in a passage quoted in Bracking, **the duty “must be exercised in substance, with rigour, and with an open mind”** (per Aikens LJ in *R (Brown) v Secretary of State for Work and Pensions* [2008] EWHC 3158 (Admin), [2009] PTSR 1506 , para 92. And, as Elias LJ said in *Hurley and Moore*, **it is for the decision-maker to determine how much weight to give to the duty: the court simply has to be satisfied that “there has been rigorous consideration of the duty”**. Provided that there has been **“a proper and conscientious focus on the statutory criteria”**, he said that **“the court cannot interfere ... simply because it would have given greater weight to the equality implications of the decision”**.

76. Pieretti is particularly in point as it concerned the interrelationship of Part VII of the 1996 Act and what is now the 2010 Act, and the Court of Appeal rightly held that what is now the public sector equality duty applied to a housing authority when performing its functions under Part VII. At para 28, Wilson LJ referred to “the six specified aspects of the duty” in the predecessor to subsections (1) and (3) of section 149 as “complement[ing] the duties of local authorities under Part VII ”.

77. The specific issue in the case was whether the reviewing officer had complied with what was the statutory predecessor of the equality duty, when deciding that the applicant and his wife were voluntarily homeless because they had failed to pay the rent due on their previous home as a result of which they were evicted. The Court of Appeal held that, on the specific facts of the case, the reviewing officer was in breach of her duty under section 49A(1)(d) , because “she fail[ed] to make further inquiry in relation to some such feature of the evidence presented to her as raised a real possibility that the applicant was disabled in a sense relevant to whether he acted ‘deliberately’ ... and in particular to whether he acted ‘in good faith’” – per Wilson LJ at paras 35-36.

78. In cases **such as the present, where the issue is whether an applicant is or would be vulnerable** under section 189(1)(c) if homeless, **an authority's equality duty can fairly be described as complementary to its duty** under the 1996 Act. **More specifically, each stage of the decision-making exercise as to whether an applicant with an actual or possible disability or other**

“relevant protected characteristic” falls within section 189(1)(c) , must be made with the equality duty well in mind, and “must be exercised in substance, with rigour, and with an open mind”. There is a risk that such words can lead to no more than formulaic and high-minded mantras in judgments and in other documents such as section 202 reviews. **It is therefore appropriate to emphasise that the equality duty, in the context of an exercise such as a section 202 review, does require the reviewing officer to focus very sharply on (i) whether the applicant is under a disability (or has another relevant protected characteristic), (ii) the extent of such disability, (iii) the likely effect of the disability, when taken together with any other features, on the applicant if and when homeless, and (iv) whether the applicant is as a result “vulnerable”.**

79. Mr Underwood QC argued that the equality duty added nothing to the duty of an authority or a reviewing officer when determining whether an applicant is vulnerable. **I quite accept that, in many cases, a conscientious reviewing officer who was investigating and reporting on a potentially vulnerable applicant, and who was unaware of the fact that the equality duty was engaged, could, despite his ignorance, very often comply with that duty. However, there will undoubtedly be cases where a review, which was otherwise lawful, will be held unlawful because it does not comply with the equality duty.** In *Holmes-Moorhouse* [2009] 1 WLR 413 , at paras 47-52, I said that a “benevolent” and “not too technical” approach to section 202 review letters was appropriate, that one should not “search for inconsistencies”, and that immaterial errors should not have an invalidating effect. I strongly maintain those views, but they now have to be read in the light of the contents of para 78 above in a case where the equality duty is engaged.

Conclusions on these appeals

81. Mr Kanu's appeal should be allowed, and Southwark's decision quashed. The review letter is a full and considered document, but it suffers from the errors of (i) assessing Mr Kanu's vulnerability by reference to “another ordinary street homeless person”, and (ii) assuming that an authority is entitled to treat members of a household as not vulnerable if one of them is mentally and physically healthy — see paras 31(ii) and (iii) above. It is plain that an appeal against a review cannot succeed in every case where the wrong comparator has been invoked or a wrong legal assumption is made. Indeed, I do not think that Mr Kanu's appeal could succeed if the only error was the reference to “street homeless”. But in this case, the important factor to my mind is that Mr Kanu

had and has what appears to be a pretty strong case for claiming to be vulnerable. It is therefore quite conceivable that the review would have gone the other way if the right comparator had been used.

82. I would not, however, have allowed his appeal based on the equality duty. While some might find the outcome of the review surprising, in my view, albeit in a rather prolix and slightly confusing way, Ms Emmanuel did approach the question of Mr Kanu's vulnerability in a sufficiently full and considered way to satisfy the equality duty. The letter appears to identify each aspect of his disability; to address with care the questions of how they would be dealt with if he was homeless; how they would affect him, if he was homeless; whether he would therefore be vulnerable; and why, in Ms Emmanuel's view, he would not. In forming this view, I do not place significant weight on the fact that she specifically mentioned the equality duty (although she gave the 2010 Act the wrong name) – see para 31(ix) above. If the earlier part of the letter had not complied with the duty, I doubt very much that the throw-away reference to the equality duty could have saved it.

83. We were told that Mr Kanu's medical condition had deteriorated since the review decision had been made, and that he was in hospital. We were also told that, to their credit, Southwark had written to his solicitors indicating that he should make a fresh application as his deteriorating health justified a fresh Part VII application being made (following the guidance in *Tower Hamlets London Borough Council v Rikha Begum* [2005] EWCA Civ 340, [2005] 1 WLR 2103).

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Appendix 5: Analysis of outcomes for claimants' in judgments listed in appendix 8														
Year	Cases	Ref.	RED or race PSED			DED or disability PSED			Race & disability			Total race & disability cases		
			F	N	S	F	N	S	F	N	S	F	N	S
A: High Court & Tribunal														
2001	0	N/A	0	0	0	0	0	0	0	0	0	0	0	0
2002	0	N/A	0	0	0	0	0	0	0	0	0	0	0	0
2003	1	1	1	0	0	0	0	0	0	0	0	1	0	0
2004	0	N/A	0	0	0	0	0	0	0	0	0	0	0	0
2005	1	2	0	0	1	0	0	0	0	0	0	0	0	1
2006	2	3, 5	2	0	0	0	0	0	0	0	0	2	0	0
2007	4	6, 7, 9, 10	1	0	1	0	0	1	0	0	1	1	0	3
2008	9	footnote ²⁶	2	0	4	1	0	0	2	0	0	5	0	4
2009	15	footnote ²⁷	4	1	0	5	0	3	1	0	1	10	1	4
2010	12	footnote ²⁸	2	0	0	5	1	1	1	0	2	8	1	3
2011	18	footnote ²⁹	3	1	1	5	0	4	1	0	3	9	1	8
2012	19	footnote ³⁰	6	0	0	2	1	4	1	0	5	9	1	9
2013	14	footnote ³¹	2	0	0	9	1	1	1	0	0	12	1	1
2014	9	footnote ³²	1	0	1	3	1	2	0	0	1	4	1	4
All	104	Total	24	2	8	30	4	16	7	0	13	61	6	37
<i>Percentages (rounded up)</i>			<i>71%</i>	<i>6%</i>	<i>24%</i>	<i>60%</i>	<i>8%</i>	<i>32%</i>	<i>35%</i>	<i>0%</i>	<i>65%</i>	<i>59%</i>	<i>6%</i>	<i>36%</i>

²⁶ 9 HC cases in 2008: 11, 13, 15, 16, 17, 19, 20, 22, 23

²⁷ 15 HC cases in 2009: 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 39, 41, 42

²⁸ 12 HC cases in 2010: 44, 45, 46, 47, 48, 51, 52, 53, 57, 58, 59, 60

²⁹ 18 HC cases in 2011: 61, 62, 64, 65, 66, 67, 68, 70, 72, 73, 74, 76, 77, 78, 80, 81, 82, 83

³⁰ 19 HC cases in 2012: 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105

³¹ 14 HC cases in 2013: 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 118, 119, 122

³² 9 HC cases in 2014: 124, 125, 126, 129, 130, 131, 133, 134, 136 cases heard by 31/7/14. 8 more HC judgments were handed down by 31/12/14 (so 17 for the year)

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Appendix 5: Analysis of outcomes for claimants' in judgments listed in appendix 8														
Year	Cases	Ref.	RED or race PSED			DED or disability PSED			Race & disability			Total race & disability cases		
			F	N	S	F	N	S	F	N	S	F	N	S
B. Court of Appeal³³														
2006	1	4	0	1	0	0	0	0	0	0	0	0	1	0
2007	1	9	0	1	0	0	0	0	0	0	0	0	1	0
2008	3	12,18, 21	2	0	1	0	0	0	0	0	0	2	0	1
2009	3	24, 35 38	0	1	0	0	0	0	2	0	0	2	1	0
2010	5	footnote ³⁴	2	0	1	1	0	1	0	0	0	3	0	2
2011	7	footnote	1	0	0	2	0	1	2	0	1	5	0	2
2012	0	None	0	0	0	0	0	0	0	0	0	0	0	0
2013	3	footnote	0	0	0	1	0	1	1	0	0	2	0	1
2014	5	footnote ³⁵	0	0	0	3	0	2	0	0	0	3	0	2
All	28	Total	5	3	2	7	0	5	5	0	1	17	3	8
Percentages			50%	30%	20%	58%	0%	42%	83%	0%	17%	61%	11%	29%
C. HoL or Supreme Court³⁶														
2008	1	14 ³⁷	0	1	0	0	0	0	0	0	0	0	1	0
2009	2	40, 43 ³⁸	0	2	0	0	0	0	0	0	0	0	2	0
2010	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2011	1	69	0	0	0	1	0	0	0	0	0	1	0	0
2012	0	0	0	0	0	0	0	0	0	0	0	0	0	0

³³ First Court of Appeal judgment was handed down October 2006.

³⁴ 5 Court of Appeal judgments 2010: 49, 50, 54, 55, 56. 7 Court of Appeal judgments 2011: 63, 71, 75, 79, 84, 85, 86. 3 Court of Appeal judgments 2013: 117, 120, 121.

³⁵ 5 Court of Appeal judgments 2014: 123, 127, 128, 130, 133 by 31/7/14. 2 Court of Appeal judgments were handed down by between 1/8/14 & 31/12/14.

³⁶ House of Lords (HoL) or Supreme Court. No House of Lords judgments re cases in appendix 10 until case 14. Judgment handed down on 30/4/08.

³⁷ Appeal by Secretary of State but not of the RED judgment.

³⁸ Same case but two linked judgments neither of which challenged the original RED finding of the High Court.

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Appendix 5: Analysis of outcomes for claimants' in judgments listed in appendix 8														
Year	Cases	Ref.	RED or race PSED			DED or disability PSED			Race & disability			Total race & disability cases		
			F	N	S	F	N	S	F	N	S	F	N	S
2013	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2014	0	0	0	0	0	0	0	0	0	0	0	0	0	0
All	4	Total	0	3	0	1	0	0	0	0	0	1	3	0

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Appendix 6: Analysis of legal representation and involvement by VCOs, civil society organisations (CSOs) and Equality Commissions in the 136 cases listed in appendix 8			
A: All 45 cases of 136, listed in appendix 8, in which the claimants succeeded (33% success rate)			
45 cases: 2, 6, 7, 10, 11, 13, 16, 18, 19, 30, 31, 37, 42, 45, 46, 49, 52, 54, 61, 62, 64, 65, 66, 70, 71, 77, 78, 79, 88, 91, 92, 93, 94, 98, 101, 103, 104, 114, 120, 123, 124, 125, 129, 132, 136			
B. Claimants' & VCOs' legal representatives & VCO involvement			
	<i>Solicitors</i> ³⁹	3+ cases	Instructions ⁴⁰
1.	Bhatt Murphy	8	11, 18, 39, 93 , 100, 115, 119, 133
2.	Bindmans Solicitors	16	2, 4, [7], 16 , 26, 35, 36, 37 , 40, 43, 46, 49 , 59, 73, 84, 99
3.	Blavo and Co Solicitors	3	54, 85, 86
4.	<i>Christian Khan Solicitors</i>	3	1, 3, 97
5.	<i>Davies Gore and Lomax</i>	4	15, 24, 83, 89
6.	Deighton Pierce Glynn Solicitors	9	21, 61, 64, 91, 98, 101 , 110, 120, 124
7.	<i>Hossacks Solicitors</i>	4	20, 42 , 85, 86
8.	Irwin Mitchell Solicitors	14	17, 33, 66, 72, 75, 77 , 87, 107, 111, 118, 121, 122, 128, 129
9.	Leigh Day Solicitors	9	(16) , (35), (43), 103 , 106, 108, 116, 117, 127
10.	Linder Myers Solicitors	4	6, 8, 14, 131
11.	Public Interest Lawyers Ltd	3	78, 88, 92
12.	Public Law Solicitors	6	58, 66 , 102, 116, 127, 134
13.	<i>Russell Jones Walker Solicitors</i>	3	44, 55, 81
14.	Scott Moncrieff Harbour Sinclair	3	31, 109, 120
15.	South West Law Ltd	5	9, 12, 15, 21, 24
		94	Some cases involved more than one firm of solicitors ⁴¹

³⁹ The solicitors listed under heading B were involved in 81 of the 136 cases (60%). In 3 cases (cases 25, 47, 125), it was not possible to identify if a solicitor was involved. In 2 cases the claimant was a public body challenging another public body (cases 62, 94). In 1 case (case 105) the claimant instructed.

⁴⁰ Solicitor provided instructions to barristers working for claimants, 3rd parties or [interested parties] in 3 or more cases. Bold signifies that the claimant's case succeeded.

⁴¹ These solicitors provided instructions to barristers for: claimants in 81 cases (60%); 3rd parties in 3 cases (2%); one interested party. Italics means legal entity has changed (e.g. merger) but Hossacks went out of business.

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Appendix 6: Analysis of legal representation and involvement by VCOs, civil society organisations (CSOs) and Equality Commissions in the 136 cases listed in appendix 8					
C: Firms of solicitors which instructed 4 or more times for claimants or third parties					
	Top 10 solicitors	For claimants		Notes	
1 st	Bindmans Solicitors	15	11%	If all instructions issued by solicitors were considered: <ul style="list-style-type: none"> ▪ Bindmans, 16 cases (12%); ▪ Leigh Day, joint 3rd on 9 cases (7%) with Deighton Pierce Glynn; ▪ Bhatt Murphy, 5th; ▪ Public Law Solicitors, 6th; ▪ no other changes. 	
2 nd	Irwin Mitchell Solicitors	14	10%		
3 rd	Deighton Pierce Glynn Solicitors	9	7%		
4 th	Bhatt Murphy	8	6%		
5 th	Leigh Day Solicitors	6	4%		
5 th	Public Law Solicitors	6	4%		
7 th	South West Law Ltd.	5	4%		
8 th	<i>Davies Gore and Lomax</i>	4	3%		
8 th	<i>Hossacks Solicitors</i>	4	3%		
8 th	Linder Myers Solicitors	4	3%		
	Others 5@3 cases each	15	11%		
D. Involvement by VCOs and civil society organisations					
VCOs involvement		Cases	Instructed	Other involvement⁴²	
				3 rd party	Interested
1	Age UK	2		56, 69	
2	Alliance for Better Bone Health	[1]			[27]
3	Alzheimer's Society	[1]			[7]
4	<i>Association of Chief Police Officers</i>	[1]			[97]
5	<i>Board of Deputies of British Jews</i>	1		43	
6	British Humanist Association	3		16, 35, 43	
7	Cambridge House Law Centre	1	135		

⁴² Other involvement, the VCO or civil society organisation was a 3rd party intervener or an [interested party].

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Appendix 6: Analysis of legal representation and involvement by VCOs, civil society organisations (CSOs) and Equality Commissions in the 136 cases listed in appendix 8					
8	Child Poverty Action Group	2	74, 136		
9	Council for Disabled Children	[1]			[31]
10	Disability Law Service	4	29, 32, 56, 69		
11	Harrow Law Centre	1	82		
12	Howard League for Penal Reform	1	39		
13	Islington Law Centre	1	130		
14	MIND	1		123	
15	Medical Justice	1		123	
16	Migrants Law Project	1	130		
17	National Osteoporosis Society	[1]			[27]
18	National Youth Advocacy Service	1	113		
19	Public Law Project	10	10, 19, 23, 28, 30, 38, 52, 65, 79, 132		
20	Refugee & Migrant Justice	1	57		
21	Salisbury Independent Living	[1]			[53]
21	Shelter	2	71 (South Yorkshire)	116	
22	StopWatch	[1]			[97]
23	<i>T&Gs of Etz Chaim Primary School</i>	[1]			[105]
24	<i>United Synagogue</i>	3		16, 35, 43	
	VCO/civil society involvement⁴³	43 [8]	23 cases	8 cases	6 cases

⁴³ 24 VCOs & Civil Society Organisations involved 43 times in 37 separate cases.

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Appendix 6: Analysis of legal representation and involvement by VCOs, civil society organisations (CSOs) and Equality Commissions in the 136 cases listed in appendix 8				
E: Involvement by the Equality Commissions and the Children’s Commissioner for England				
Equality Commission		Cases	Instructed	3rd party intervener
1	CRE	1		2
2	EHRC	21	45	12, 15, 18, 19 , 22, 24, 26, 32, 37 , 38, 43, 49 , 83, 84, 104 , 110, 116, 120 , 127, 136
3	Children’s Commissioner	2		11, 18
		23		Note⁴⁴
F: Appearances by barristers for claimants or involved VCOs, Equality Commissions or CCE				
Barristers		3+ cases	Claimant’s barrister⁴⁵	3rd barrister
1	Robin Allen, QC	5	21	12, 15, 21, 43
2	Nick Armstrong	4	28, 64, 101, 111	
3	Jonathon Auburn	4	104, 121, 122, 128	
4	Paul Bowen QC	8	26, 31 , 32, 39, 59, 82, 97, 119	
5	Stephen Broach	7	56, 58, 66 , 69, 72, 87, 118	
6	Jamie Burton	3	74, 107, 129	
7	Stephen Cottle	5	9, 12, 21, 25, 50	
8	Stephen Cragg	4	10 , 29, 56, 69	
9	Richard Drabble QC	4	12, 62 , 127, 136	
10	Michael Fordham QC	4	13 , 60, 99	[7]⁴⁶
11	Stephanie Harrison	6	45, 93 , 100, 115, 123 , 133	
12	Ben Jaffey	3		16 , 35, 43
13	Janet Kentridge	3	6 , 8, 14	

⁴⁴ The CRE, EHRC or the Children’s Commissioner for England were third party interveners in 23 of the 136 cases (17%), the EHRC and the Children’s Commissioner both intervened in case 18. **Bold** means claimant succeeded.

⁴⁵ These barristers appeared on behalf of claimants in 92 of the 136 cases (68%). They appeared on behalf of third party interveners (VCOs, Equality Commissions or the Children’s Commissioner) in 23 cases (17%).

⁴⁶ Barrister appeared for one VCO that was an interested party.

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Appendix 6: Analysis of legal representation and involvement by VCOs, civil society organisations (CSOs) and Equality Commissions in the 136 cases listed in appendix 8				
14	Kate Markus	3	91, 116, 127	
15	[Professor]Aileen McColgan	5	19, 61, 80, 88	43
16	Karon Monaghan QC	9	54, 57, 101, 111, 131	18, 19, 38, 84
17	Helen Mountfield QC	21	2, 4, 16, 19, 35, 40, 43, 60, 61, 65, 73, 78, 88, 92	22, 49, 104, 110, 116, 120, 127
18	Lord David Pannick QC	3	7	2, 35
19	Mathew Purchase	3	76, 78, 114	
20	Dinah Rose QC	9	16, 35, 37, 40, 43, 52, 84, 130	123
21	Rabinder Singh QC	6	1, 2, 4, 6, 8, 14	
22	Martin Westgate QC	5	74, 81, 116, 127, 134	
23	Mark Willers	4	5, 83	15, 24
24	Ian Wise QC	10	58, 66, 72, 87, 107, 112, 118, 120	56, 69
25	David Wolfe QC	16	23, 30, 36, 38, 49, 68, 77, 102, 103, 108, 110, 120	16, 32, 35, 43
G: Analysis of VCO and Equality Commission involvement				
Analysis	Cases	Relevant cases⁴⁷		
VCO instructed barrister	23	10, 19, 23, 28, 29, 30, 32, 38, 39, 52, 56, 57, 65, 69, 71, 74, 79, 82, 113, 130, 132, 135, 136		
VCOs/CSOs were interested parties	6	7, 27, 31, 53, 97, 105		
VCOs/CSOs were 3 rd party interveners	7	16, 35, 43, 56, 69, 116, 123		
CRE or EHRC was a 3 rd party intervener ⁴⁸	21	2, 12, 15, 18, 19, 22, 24, 26, 32, 37, 38, 43, 49, 83, 84, 104, 110, 116, 120, 127, 136		

⁴⁷ Some cases had more than one 3rd party intervener or more than one VCO interested party.

⁴⁸ In addition to instructing the barrister, the EHRC was also the claimant in case 45 in appendix 8.

The effectiveness of the race and disability public sector equality duties as positive legal duties and legal accountability tools
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Appendix 6: Analysis of legal representation and involvement by VCOs, civil society organisations (CSOs) and Equality Commissions in the 136 cases listed in appendix 8				
H: Analysis of the frequency of appearances by barristers for claimants or 3rd parties				
	QC or barrister	Appearances		Chambers⁴⁹
1 st	Helen Mountfield QC	21	15%	Matrix Chambers
2 nd	David Wolfe QC	16	12%	Matrix Chambers
3 rd	Ian Wise QC	10	7%	Doughty Street Chambers (until July 2014)
4 th	Karon Monaghan QC	9	7%	Matrix Chambers
4 th	Dinah Rose QC	9	7%	Blackstone Chambers
6 th	Paul Bowen QC	8	6%	Doughty Street Chambers (until Sept.2014)
7 th	Rabinder Singh QC	6	4%	Matrix Chambers
7 th	Stephanie Harrison	6	4%	Garden Court Chambers
7 th	Stephen Broach	6	4%	Doughty Street Chambers (until July 2014)
10 th	[Professor]Aileen McColgan	5	4%	Matrix Chambers
10 th	Stephen Cottle	5	4%	Garden Court Chambers
10 th	Martin Westgate QC	5	4%	Doughty Street Chambers
10 th	Robin Allen, QC	5	4%	Cloisters Chambers
14 th	Nick Armstrong	4	3%	Matrix Chambers
14 th	Michael Fordham QC	4	3%	Blackstone Chambers
14 th	Mark Willers QC	4	3%	Garden Court Chambers
14 th	Stephen Cragg	4	3%	Doughty Street Chambers
14 th	Richard Drabble QC	4	3%	Landmark Chambers
14 th	Jonathon Auburn	4	3%	39 Essex Chambers
20 th	Janet Kentridge	3	2%	Matrix Chambers
20 th	Mathew Purchase	3	2%	Matrix Chambers
20 th	Lord David Pannick QC	3	2%	Blackstone Chambers
20 th	Ben Jaffey	3	2%	Blackstone Chambers

⁴⁹ Paul Bowen & Stephen Broach moved to Brick Court, July 2014. Ian Wise moved to Moncktons, Sept. 2014.

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Appendix 6: Analysis of legal representation and involvement by VCOs, civil society organisations (CSOs) and Equality Commissions in the 136 cases listed in appendix 8				
20 th	Jamie Burton	3	2%	Doughty Street Chambers
20 th	Kate Markus	3	2%	Doughty Street Chambers
		153		Appearances ⁵⁰
I: Chambers which appeared 10 or more times cases				
Top 4 chambers by number of appearances		Appearances	% of appearances in 136 cases listed in appendix 8	
1st	Matrix Chambers	67	49%	
2nd	Doughty Street Chambers	39	29%	
3rd	Blackstone Chambers	19	14%	
4th	Garden Court Chambers	15	11%	
5th	Cloisters, Landmark & 39 Essex Chambers	13	4%	
		153		

⁵⁰ These barristers, listed under heading H, appeared for claimants in 92 (68%) of 136; they also appeared for 3rd party interveners (VCOs, equality commissions or the Children’s Commissioner in 23 of 136 cases (17%).

Appendix 7: Key legal firms, solicitors, chambers and barristers								
Lawyers/ no. of cases			Text drawn from the websites of the agencies, minor textual, but no substantive changes, made	Cause lawyer tests				
C1) Espoused a commitment to the advancement of equality and/or human rights. C2) Used the law to advance social justice. C3) sought to publicise how the duties may be successfully deployed. C4) sought to promote legal empowerment. C5) engaged in wider activities to advance social justice and/or contributed to social or political mobilisation.				C1	C2	C3	C4	C5
1st	Bindmans Solicitors	16	Bindmans set up in 1974 by the leading human rights lawyer Sir Geoffrey Bindman, his vision was to create a law firm dedicated to protecting the rights and freedoms of ordinary people. The firm has evolved to offer a broad range of services both to private individuals, NGOs, companies, and other organisations. However, that founding commitment – to fairness and to ensuring access to justice – remains at the heart of everything we do. Today, it has one of the biggest dedicated public law departments in the country and remains a legal pioneer both nationally and internationally. Our lawyers’ expertise and commitment to this complex field are unrivalled. We take on an unparalleled range of cases and regularly litigate in the highest UK courts, as well as the European Court of Justice and the European Court of Human Rights. We actively collaborate with community partners to promote equality, diversity and inclusion. This has resulted in a wide range of activities including involvement with local community organisations, volunteering, membership of committees, outreach activities and pro bono work. Legal 500 London: Administrative and Public Law, band 1	1	1	1	1	1
2nd	Irwin Mitchell Solicitors	14	Established in 1912. One of the largest law firms in the UK, over 180 partners and over 900 associates, consultants, senior advisors and other fee earners. Employs over 2,300 people. Helped over 1 million clients with their legal needs since 1912 and continue to help thousands of people every year. Largest 'full service' law firm in the UK, providing a wide range of private client and business legal services to private individuals, businesses, charities, institutions and organisations http://www.irwinmitchell.com/about-us/key-facts Our Experience In Fighting For The Rights Of Our Clients: These cases often involve challenging employers, local authorities, or even the government. This may seem daunting, but with our expert solicitors on your side you give yourself an excellent chance of success. We have helped many clients to make successful challenges, with results ranging from financial	1	1	1	1	

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			<p>compensation to changes in the law. If we think you have a strong case, we'll take your fight as far as is necessary. We've previously taken cases all the way to the Supreme Court, European Court of Justice and the European Court of Human Rights, so we're not daunted by any challenge. If you're looking to challenge the decision of a public body, please visit our judicial review page for some useful advice. Social Responsibility (SR) programme is a fundamental part of who we are. Four strands: Our People, Our Community, Our Environment and Our Pro Bono. £200 million turnover. Empowerment Social responsibility Equality and diversity</p> <p>Legal 500 London: Administrative and Public Law, band 2</p>							
3 rd	Deighton Pierce Glynn Solicitors	9	<p>Uses the law to enforce the rights of the disadvantaged of society, hold the state to account for its actions, challenge discrimination and fight human rights and environmental abuses. Adept at conducting high-profile test cases and related campaigning work for individuals and organisations. Equally committed to conducting less high-profile or highly confidential work for clients. Started in May 2012, from the merger of two of the top rated firms in London – Deighton Guedalla and Pierce Glynn. By claimant-focused we mean that in the majority of our cases we act for individuals and organisations bringing judicial review claims. We also provide training and advice to public sector organisations on how they can improve the quality of their decision-making. We also established – in face of opposition from the Crown Prosecution Service - that witnesses providing information to the Crown Prosecution Service were protected by the Race Relations Act. We represented Duwayne Brooks at the Stephen Lawrence Inquiry and made a key contribution to the understanding of racism as set out in the McPherson Report.'</p> <p>Legal 500 London: Administrative and Public Law, band 2</p>			1	1	1	1	1

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3 rd	Leigh Day Solicitors	9	<p>Leigh Day, a specialist law firm with some of the country's leading personal injury, product liability, clinical negligence, employment and discrimination, international and human rights teams. Unlike other law firms, we act exclusively for claimants who've been injured or treated unlawfully by others. Established in 1987, has become a highly distinctive law firm who is not afraid to take on challenges that would daunt many others. The firm's ethos is to ensure that the ordinary person has just as good quality legal advice as our state bodies, insurers and multi-nationals which has led us to take on many 'David and Goliath' legal struggles for justice. Our aim is to remain a niche firm specialising in the more complex aspects of personal injury and human rights law. Committed to achieving access to justice for all including full, fair compensation by providing first-rate legal advice. Our first priority is always to clearly understand the needs of our clients as every individual's case has a unique set of circumstances. All our lawyers are passionate about their work and determined to achieve the best outcome for their clients no matter what obstacles they face.</p> <p>Legal 500 London: Administrative and Public Law, band 1</p>	1	1	1	1	1	
5th	Bhatt Murphy	8	<p>Bhatt Murphy is a team of lawyers who work together to make a contribution to the protection of civil liberties. We offer specialist help to members of the public who seek accountability from the state and its officers. Our focus is upon the treatment of individuals by the criminal justice system as well as those within immigration detention. We are motivated by the needs of our clients and use the law as a tool to assist in the realisation of their objectives. We aim to deliver a high quality legal service irrespective of our client's ability to pay. We seek to contribute to the progressive development of the law and to the protection of civil liberties outside the courts. For this website the lawyers at Bhatt Murphy have created a unique resource. Explore our timelines to understand the impact of our client's cases. Learn how legal challenges relate to legislation and other political action. Understand the law in context and</p>	1	1	1	1	1	

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			<p>learn how political and legal events impact on one another. Find out more about Bhatt Murphy's contribution to legal change. The timelines contain downloads and links to judgments, policy documents and other background reading.</p> <p>Legal 500 London: Administrative and Public Law, band 3</p>							
6th	Public Law Solicitors	6	<p>Specialises in public law, human rights and community care law and has acknowledged expertise in Claimant judicial review. Strong commitment to equality and social justice. Based in Birmingham, we have a national reputation, and act for clients across England and Wales in challenges to central and local government and other public bodies. We act on behalf of publicly funded and private clients. Founded in 2003 to provide a specialist legal service in the fields of public law, human rights and community care. We have recently expanded and now employ 6 solicitors. Based in Birmingham, a national profile for our specialism in Claimant judicial review and for the quality of our service. PLS offers specialist training in public law, community care, human rights and housing to other solicitors, the not for profit sector and to local government. PLS is not a campaign group; we are a firm of solicitors whose paramount concern is always to act in the best interests of our clients. Nevertheless, we are interested in using the law to effect social change through the use of test cases and through partnerships with voluntary sector organisations.</p> <p>Legal 500 London: Administrative and Public Law, band 6.</p>			1	1	1	1	1

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	John Halford Partner: Bindmans Solicitors	9 ⁵¹	<p>Began work as a lawyer in the voluntary sector; manager and senior adviser at an immigration advice centre Bristol 1990-91; qualified as solicitor 1996 at Humberside Law Centre; in 1998 joined the Public Law Project, the leading national NGO promoting access to public law remedies; joined Bindmans 2003; partner March 2006. John has written a number of articles on public law issues in specialist legal publications such as 'Judicial Review', 'Disabled Student Advisor' and 'Legal Action'; co-author of 'Butterworth's Health Services Law and Practice Encyclopaedia' and 'Legal Action's' health law series. A public law specialist. As a litigator, he has focussed on judicial review work since 1993, challenging the unfair exercise and abuse of power by public authorities, human rights breaches and discrimination. He represents individuals, campaign and action groups, unions, charities, schools, professional associations and regulators, arts organisations and commercial companies – not only as judicial review claimants, but also as interested parties and interveners in cases brought by others that affect their interests or those of people they represent. John has had a number of notable successes in high profile test cases in the Court of Appeal, the House of Lords and the UK Supreme Court. He has European Court of Human Rights experience at Grand Chamber level. John is also a source of decisive and trusted advice on a wide range of complex public law issues. His advisory caseload includes professional disciplinary, regulatory, procurement, planning, pensions EU and human rights law matters. John was a Board member of the Public Law Project. In the Chambers and Partners legal directory John has starred rankings (the highest awarded) in the fields of administrative and public law, human rights and civil liberties. He is also recommended as a leader in the fields of professional disciplinary and police law work. The Legal 500 directory lists him as a leader in the fields of administrative and public</p>			1	1	1	1	1

⁵¹ Leading cases listed in appendix 8 including cases 2, 7, 16, 35, 36, 37, 40, 43, 49

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			law, civil liberties, human rights and healthcare. He is a past winner of a Legal Aid Lawyer of the Year award. He is the Best Lawyers Directory 2014 'Lawyer of the Year' for Administrative and Public Law. Leading individual Legal 500							
	Louise Whitfield Partner: Deighton Pierce Glynn	5 ⁵²	Louise joined Deighton Pierce Glynn in 2009. A partner at Deighton Pierce Glynn. Louise previously worked at the Public Law Project (PLP), the leading public law NGO, where she was Head of Casework. Widely recognised as a leader in the field of public law, described by clients in the Chambers Directory as “exemplary in her commitment to use law to further the interests of the most disadvantaged groups in society, and she does so in a very tactful and sensitive way.” ... highly recommended in administrative and public law in Legal 500 and is recognised in the current edition of the Chambers Directory (2015) as a leader in the field of administrative and public law, as well as civil liberties and human rights; the latter describes her as "creating really important stepping stones under the radar. She has a rare talent to spot the cases that are important". Much of Louise’s casework has focused on public law discrimination challenges arising from breaches of the public sector equality duty. She regularly represents women’s organizations on a wide range of public law issues. In 2011, she represented the claimants in a successful challenge to London Councils’ proposals to cut their grants budget by £10 million. She regularly advises and represents claimants in a wide range of issues arising from the reductions in public sector funding and services, including most recently funding cuts to support groups for people with learning disabilities and women’s refuges. Louise is a founding member of the Deaf and Disabled People’s Legal Network , set up by Inclusion London to bring together DDPOs and lawyers to raise understanding of the legal system, legislation, case law and policy that relates to the quality of life, rights and inclusion of Deaf and disabled			1	1	1	1	1

⁵² Leading cases listed in appendix 8 including cases 10, 19, 61, 110, 120

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			people. She was nominated for a Legal Aid Lawyer of the Year award for her work with the Network. Louise also has extensive experience of delivering public law training to lawyers and non-lawyers, having designed, developed and delivered a wide range of courses ranging from conference workshops on public law basics and the equality duty, to one-day events on judicial review pre-action tactics and strategy for claimants' representatives.							
1st	Matrix Chambers	67	Matrix Chambers was formed in 2000 with the specific purpose of finding new and innovative ways of working. 59 full time members plus nine academics and seven associate members. We act both for and against public authorities and have significant experience as practitioners and as a body in judicial review. We work in a modern environment where diversity and accessibility are widely championed, and out-dated practice is challenged. Matrix is founded on 17 Core Values. Closer links between practising and academic lawyers (CV4). We are committed to a public service ethos. This includes a commitment to publicly funded work (including for public authorities), public interest litigation and, where appropriate, pro bono work. Such work is held in equal esteem with private client work (CV13). They are not just an empty mission statement; these Core Values underpin all that we do. Throughout our work, Matrix members and staff actively support and strive to achieve these ideals which have underpinned the organisation from the beginning. Committed to service excellence and to operating as an integrated team to meet client needs. Legal 500 London Bar: Administrative and Public Law, band 2			1	1	1	1	1

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Lawyers/ no. of cases		Text drawn from the websites of the agencies, minor textual, but no substantive changes, made			Cause lawyer tests				
					C1	C2	C3	C4	C5
		C1) Espoused a commitment to the advancement of equality and/or human rights. C2) Used the law to advance social justice. C3) sought to publicise how the duties may be successfully deployed. C4) sought to promote legal empowerment. C5) engaged in wider activities to advance social justice and/or contributed to social or political mobilisation.							
2 nd	Doughty Street Chambers	39	Doughty Street Chambers is a buoyant and cutting-edge set, renowned for and committed to defending freedom and civil liberties , and has a truly national and international profile across its wide range of practice in criminal law, civil law, administrative and public law, international law and human rights. Since our foundation in 1990, our aim has been and will always be to improve access to justice and to promote human rights and civil liberties through the law. Founded by fewer than 30 barristers, we have grown to become one of the largest sets in the country with over 120 members, of whom 34 are Queen’s Counsel, and we have established chambers in Manchester and Bristol as well as London. Probably the largest and most wide-ranging civil liberties legal practice in the world. Striving for access to justice, professionalism and excellence is the driving force behind everything we do. Operates public access."Dynamic barristers who forge ahead at the cutting edge of the law" We represent all those seeking to protect their human rights, exercise their human rights, and those seeking redress for violations of their human rights. Campaigns Legal-aid campaign, Legal 500 London Bar: Administrative and Public Law, band 3	1	1	1	1	1	
3 rd	Blackstone Chambers	19	Established for well over 50 years, origins are firmly rooted in commercial law. Standing has grown as Chambers has become instrumental in the development of human rights and public law. Public law and human rights cases are often at the cutting edge of legal developments in the UK and serve to help maintain the balance between the interests of the individual and the State. For many years, has been the home of barristers dedicated to ensuring that the rights and interests not only of individuals but also of regulatory bodies and companies are recognised and protected. Particularly noted for its ability to provide commercial advice in a public law context. ⁵³ The set has an almost unique mixture of commercial and public law expertise... won Set of the	1	1	1	1		

⁵³ Lord Lester of Herne Hill, QC, regarded as an architect of the 1976 Race Relations Act, is a member of this Chambers (see chapter 4).

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			Year for Human Rights and Public Law 2012 at the Chambers Bar Awards. Operates public access. Supports the Bar Pro Bono Unit. Legal 500 London Bar: Administrative and Public Law, band 1							
4th	Garden Court Chambers	15	Has come a long way from its origins in 1974 when six barristers just out of pupillage set up, with the help of a loan, in three rooms in Lincoln’s Inn. At the time, their aspirations were regarded as revolutionary if not subversive. They had clear goals in mind: i) to provide socially useful legal services, supporting and complementing law centres; ii) to work in an environment that was democratic with a balance of sexes and races; iii) to train pupils and pay them; iv) to argue cases that made a difference; in particular, to engage in the struggle for human rights (at a time when the term was regarded with nothing less than ridicule) and for sexual and racial justice. If necessary, working for no reward. Such ambitions, they realised, could only be achieved by setting up a new set of their own. Three of the founders are still members of Chambers today. Our casework has substantially contributed to the progress of the law and to social progress. In the reported cases, across all our areas of practice, counsel from Garden Court Chambers have argued in the defence of the rights of accused and in furtherance of the rights of individuals against the state in landmark decisions. Our stance is often bold and inventive and, in the end, successful. Operates qualified public access. Our belief in our motto Recte faciendo neminem timens (Do right, fear no-one!), our commitment to principle and to the quality of our client service remains as strong as ever. No mad laws campaign. Legal 500 London Bar: Administrative and Public Law, band 4			1	1	1	1	1

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1 st	Helen Mountfield QC Matrix Chambers	21	Particular areas of expertise and experience include regulatory work, equality law, terrorism and national security, education law, social welfare and election law. Frequently represents the Equality and Human Rights Commission. She was, until she took silk, a member of the Treasury A Panel, and she acts as a special advocate... a qualified mediator... particularly well-known for cases concerning discrimination and equality questions as they arise in public law, employment, commercial and other context. Involved in many of the major cases on public sector equality duties. Focuses primarily on public law, particularly judicial review, but also has a substantial practice in employment law, election law and information law. Issues of human rights, discrimination and EU law intersect across her whole practice ... is a qualified mediator. Represents individual claimants and commercial organisations.	1	1	1	1	1	
2 nd	David Wolfe QC Matrix Chambers	16	Works as a public lawyer (QC) at Matrix. Also has been appointed to be the Chair of the Recognition. Panel established by the Royal Charter in the light of the Leveson Inquiry into the culture, practices and ethics of the press. ... Until July 2008, he was a part-time Chair of the Special Educational Needs and Disability Tribunal. David is an A-Panel member of the EHRC's Panel of Preferred Counsel. David also trains lawyers and other professionals, particularly in education and public law. Contributes regularly to general and specialist publications and radio broadcasts on legal issues including human rights, education law, environmental law, community care and health law. David believes passionately that public bodies should act in a fair and open way, and that the law and lawyers have a key role in ensuring that happens. www.acanofworms.org.uk is for people concerned about academies/free schools and the law.	1	1	1	1	1	

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3 rd	Ian Wise QC Doughty Street Chambers (until July 2014) Monckton Chambers (currently)	10	Involved in a number of the most high profile public law cases in recent years including the Herceptin (breast cancer), Southwark (duties towards teenage children) and Birmingham (budget cuts to severely disabled people) cases. Trained in criminal law Ian now specialises in public and human rights law and regularly appears in the High Court, Court of Appeal and Supreme Court... regularly instructed to act for leading national charities ... Ranked as a leader in his field in public and administrative law, human rights law and education law and has appeared in numerous important cases in these areas ... Legal 500 ... Ian “has been the driving force in all the landmark test cases for children in recent years” . Co-author of Children in Need: Local Authority Support for Children and Families (Legal Action Group, April 2011). Has acted in a series of cases involving pseds towards groups such as the disabled and elderly who are protected by the Equality Act 2010 and its predecessor provisions ... has acted in a number of important cases involving challenges to cuts in services for such groups by local authorities.			1	1	1	1	1
4 th	Karon Monaghan QC Matrix Chambers	9	Practises principally in the fields of equality and discrimination law, human rights and EU law. Work spans the fields of employment law, civil actions, judicial review and inquests ... numerous cases at appellate level, including in the Court of Appeal and Supreme Court and ... in the CJEU. Awarded Liberty’s Human Rights Lawyer of the Year Award in 2010. Advisory Work. Undertakes advisory work for public bodies and NGOs. An A-Panel member of the EHRC’s Panel of Preferred Counsel. Special Adviser to the House of Commons Business, Innovation and Skills Committee for their Inquiry on Women in the Workplace (2013-14). Acted as adviser to the Government’s Women and Equality Unit on the “Discrimination Law Review” (2006) which led to the Equality Act 2010. Special Adviser to the Treasury Select Committee for their Inquiry on Women in the City (2009/10). Appointed by the Commission for the Compact to undertake an independent legal analysis and review of the Compact’s BME Code (2008) and she was			1	1	1	1	1

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			a member of the Fawcett Society's Commission on Women in the Criminal Justice System (2003-9).							
4 th	Dinah Rose QC Blackstone Chambers	9	<p>Is ranked as a 'Star at the Bar' with recommendations in eight practice areas. They are: Administrative & Public Law, Employment Law, Civil Liberties, Professional Discipline & Regulatory, Competition as well as European Law, Immigration and Telecommunications...Dinah's practice includes judicial review acting both for and against public bodies, contractual and statutory employment law claims, and cases before the European Court of Justice and the European Court of Human Rights. Dinah's particular interests include human rights, economic, sectoral and professional regulation, fertility treatment and medical ethics, all forms of discrimination, and European employment law. She was a member of the Treasury "A" Panel until her appointment as Queen's Counsel. She is a regular lecturer on public law, human rights and employment law. Professional colleagues have saluted her abilities, designating her barrister of the year in 2009 and public law silk of the year in 2013. The BBC retained her to lead its investigation into the Jimmy Savile scandal.</p>		1	1	1	1	1	
6 th	Paul Bowen QC Doughty Street Chambers (until September 2014) Brick Court	8	<p>Practises primarily in public & administrative, human rights, EU and constitutional law in judicial review and other civil actions, often with a significant cross-over with criminal law. His practise covers a broad range of subject areas including criminal justice, corporate governance, data protection, discrimination, education, EU law, freedom of information, healthcare & community care, immigration, inquests, legal aid, local government, media & entertainment, mental capacity & mental health, police, prisons, public procurement, regulatory and social security law. Paul is often instructed in high-profile challenges in the higher courts leading to significant legal changes, with over a hundred reported cases to his name. He has appeared in a wide variety of Courts and Tribunals in the UK and abroad, up to and including the Supreme Court, the Privy Council and the European Court of Human Rights. He appears for</p>		1	1	1		1	

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	Chambers (currently)		claimants, defendants and interveners whether individuals, private companies, public authorities, regulators, charities and other NGOs and was recently appointed to the new 'A' Panel of Counsel to the Equality and Human Rights Commission (EHRC). Paul is recommended in Chambers & Partners 2015 as a leading silk in five areas including Public and Administrative Law and Civil Liberties and Human Rights.							

Appendix 8: The analysis of substantive race and disability public sector equality duty judicial review and equivalent cases in England

The judgments that appear in this appendix and the state of the law as at 15th April 2015

This study focuses on English public bodies and those English bodies subject to the public sector equality duties (pseds). The judgments listed involved English public bodies or English bodies that exercised public functions apart from three cases, located at the end of the table, that involved Welsh public bodies.⁵⁴ The rationale for including or excluding judgments was whether the case spoke to how the pseds have been used to hold public bodies to account. The judgments listed in this appendix each gave substantive consideration to the general race or disability public sector equality duties (pseds); they are primarily judicial review (JR) judgments. These judgments were primarily, or resulted from, claims taken by individuals and organisations that challenged alleged race or disability psed breaches.⁵⁵ A small number of psed JR claims taken by one public body against another have also been included. A small number of planning judgments, that are not JR claims, have also been included but only where: a) the court or tribunal had jurisdiction to hear a psed claim; b) compliance with the pseds was given substantive consideration in the published judgment; and c) the court or tribunal could exercise the powers available under JR. For the purposes of this study such legal judgments are equivalent to JR judgments. These judgments were all planning cases, mostly appeal cases, under the Town and Country Planning Act 1990; most involved Gypsies and Travellers and challenges in relation to sites. Details of the search criteria are set out next.

The search for psed judgments and selection and exclusion criteria

Initially, a series of focused searches for psed JR judgments was conducted. This process led to the identification of four partially overlapping lists of Race Equality Duty (RED), Disability Equality Duty (DED), Gender Equality Duty (GED) and Public Sector Equality

⁵⁴ Three judgments have been identified that involved Welsh public bodies, subject to the pseds. These judgments are helpful so have been placed at the end of this appendix. Naturally the Welsh judgments have not been included in the analysis of case outcomes for English public bodies or equivalent bodies.

⁵⁵ The pseds were engaged when a public body/another agency exercised public functions and was subject to the pseds. However exercises of public functions were also governed by a range of legislative provisions related to the public service or function in question (e.g. education laws in the case of education functions, planning laws in relation to planning functions etc.). In addition, these exercises of public functions could also engage wider legislative provisions (e.g. the Human Rights Act 1998, general public law and/or EU law).

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Duty (PSED) judgments.⁵⁶ The four lists were amalgamated and duplicates removed; this process generated more than 200 judgments which appeared to cite the race or disability pseds. This amalgamated list was then cross-referenced against a draft list of 115 judgments produced by Professor Aileen McColgan (McColgan, 2013). The aim was to identify the majority of judgments, primarily JR judgments, which gave substantive consideration to the race and disability pseds between April 2001 and 31st July 2014.⁵⁷ The reason for seeking to identify those judgments which gave substantive consideration to the race or disability pseds was that an examination, and analysis of these judgments, and the judicial decisions re the pseds, would make a major contribution to answering both research questions.

136 of the 200+ judgments were selected for analysis. As explained in chapter 3, there were three primary selection criteria for inclusion. First, that the race or disability pseds had been given substantive consideration in the judgment, not just referenced the pseds. Second, the judgments were primarily to be those taken by individuals and organisations against public bodies and others subject to the pseds.⁵⁸ Third, authoritative or persuasive race or disability judgments were to be included.⁵⁹ Three Welsh judgments have been included at the end of this appendix; these judgments would have met the selection inclusion criteria but for the fact that they involved Welsh not English public bodies. As they are not 'English cases' they have been excluded from the analysis of cases taken against English public bodies and others subject to the pseds.

A number of exclusion criteria were also adopted. First, claims considered by the Employment Appeal Tribunal were excluded because this study focuses on claims in relation to services and public functions not employment. Second, planning judgments challenged under the Town and Country Planning Act 1990, which cited the pseds but were not from JR claims, have normally been excluded unless they raised substantive race or disability psed claims and the case was cited by leading legal commentators. The rationale for

⁵⁶ Using Westlaw, a list of 110 PSED judgments was identified, 96 RED cases were identified, 69 DED judgments were identified and 17 GED judgments were identified. This would have generated 292 judgments but for the fact that some were duplicates where more than one psed ground was cited.

⁵⁷ The race and disability equality psed judgments were RED, DED and race or disability PSED judgments.

⁵⁸ Judgments in which the race or disability pseds were basically mentioned, but given little consideration, in the judgment have been excluded from this study because in the absence of written deliberations or an adjudication little of substance can be ascertained.

⁵⁹ The judgments regarded as setting precedents were identified by reviewing assessments of the pseds produced by lawyers and by reviewing WestLaw case summaries of the judgments listed in this appendix.

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the exclusion of these cases is that they were generally initiated by a public body, normally a local authority, not by a claimant. Third, cases heard by the Scottish Courts have been excluded.

Have key judgments been excluded?

The likelihood that more than a few significant substantive race or disability psed judgments have been missed is low because of: the extensive search exercises undertaken: and the proactive and systematic approach adopted to cross-referencing and cross-checking the judgments. The judgments located on Westlaw and the British and Irish Legal Information Institute (BAILII) were cross-referenced against reviews of psed cases provided by Equality Law Reports and leading lawyers between 2006 and 2013.⁶⁰

The judgments listed

Although the PSED came into force in April 2011, some PSED judgments, that were not commenced under the RED or DED regimes, still referenced the RED or DED. This appendix therefore includes: i) RED and DED cases determined before April 2011; ii) cases that relied on the RED or DED regimes, heard under the transitional arrangements, after April 2011; and iii) judgments which cited the old RED or DED regime after April 2011. Where the race or disability aspects of the judgment were subsequently appealed and the judgment, with respect to that appeal, was handed down before 31/7/14, the case reference and outcome of the appeal have been included in this appendix. It has also been noted where appeal cases have been heard, after 31/7/14, by the Supreme Court.

What does involved mean?

3 forms of involvement for VCOs have been identified. Involvement as a third party intervener is signified by the name of the party appearing in the third column from the right with no brackets. Involvement as an interested party is indicated by the name of the interested party appearing in [square brackets] in the third column from the right. Other involvement generally means that the organisation instructed the barrister, this is signified by the party's name appearing inside {curly brackets} in the third column from the right.

⁶⁰ One would reasonably have expected to see any significant substantive judgment referenced in one or more of the judgments listed in this appendix, in the Westlaw case summaries and/or in the assessments by leading legal commentators.

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The ‘decision’

‘Heard by’ identifies the court or tribunal that heard the case. Court of Appeal cases appear in italics. Cases heard by the House of Lords or the Supreme Court appear in bold text. Claim outcome in High Court cases refers to the outcome for the original claimant’s case (i.e. the party that challenged the public body). In appeal cases, information is provided to explain who appealed and if the original claimant succeeded or failed.

The ‘subject’

Westlaw’s subject categorisations have been used where these were available. Where the judgment was not sourced from Westlaw, the subject categorisation has been drawn from Equality Law Reports or the actual judgment.

Key acronyms used in this appendix

The information below lists the key acronyms used in this appendix.

<i>Courts</i>		<i>Tribunals</i>	
HC	High Court	UT (IAC)	Upper Tribunal (Immigration and Asylum Chamber)
CA	Court of Appeal	UT (ACC)	Upper Tribunal Administrative Appeals Chamber
HL	House of Lords		
SC	Supreme Court		
<i>Subject categories</i>		<i>Classes of defendant</i>	
AL	Administrative Law	LA	local authority
GA	Government Administration	GB	Governing Body
EH	Environmental Health	GD	Government Department
FL	Family Law	NDPB	Non departmental public body
H	Housing	NMGD	Non-ministerial Government Department
LG	Local Government		
P&C	Penology and Criminology		

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Colour coding used in this appendix

Cases that appear against a grey background: This signifies where a claimants' case was upheld by the courts.

Cases that appear against a yellow background: This signifies that a case which originally considered an RED or DED claim was appealed but that the original RED or DED judgment was not appealed.

Cases that appear against an orange background: This signifies that the judge(s) did not issue a determination in relation to the pleaded element or grounds of the claim.

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	Case citation	Decision			Class of case		Others/defendant class Involved: Intervener [interested party] {other}		Case status
	Neutral case citation	Heard by	Outcome re psed claim	Date	Race or disability	Subject	Involved	Class	WL status
1.	R. (on the application of Elliott) v Electoral Commission [2003] EWHC 395 (Admin)	HC	RED application refused.	17/2/03	Race	Civil procedure	[Leicester City Council]	Independe nt Body Corporate	
2.	Elias, R (on the application of) v Secretary of State for Defence & Anor [2005] EWHC 1435 (Admin)	HC	RED application upheld.	7/7/05	RED	AL	CRE	LA	C
3.	R (Casey) v Crawley BC [2006] EWHC 301 (Admin)	HC	RED application dismissed	1/3/06	RED	Travellers	[ODPM]	LA	
4.	<i>Secretary of State for Defence v Mrs Diana Elias [2006] EWCA Civ 1293</i>	CA	<i>Appeals dismissed.</i>	<i>10/10/06</i>	<i>RED</i>	<i>AL</i>		<i>GD (appealed by C&R)</i>	<i>C</i>
5.	R. (on the application of Smith) v South Norfolk Council [2006] EWHC 2772 (Admin)	HC	RED application failed.	10/11/06	RED	Planning; LG; Human rights		LA	C
6.	Bapio Action Ltd & Anor, R (on the application of) v Secretary of State for the Home Department & Anor [2007] EWHC 199 (QB)	HC	RED appeal upheld [Declaration]	9/2/07	RED	GA; Immigration; AL; Health		GD	P
7.	Eisai Ltd. v The National Institute for Health and Clinical Excellence (Nice) [2007] EWHC 1941 (Admin)	HC	Application succeeded. [New guidance ordered]	10/8/07	RED DED	Health; AL	[The Alzheimer's Society] [Shire Pharmaceutica]	NDPB	P

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	Neutral case citation	Heard by	Outcome re psed claim	Date	Race or disability	Subject	Involved	Class	WL status
							Is Ltd]		
8.	<i>Bapio Action Ltd & Anor, R (on the application of) v Secretary of State for the Home Department & Anor [2007] EWCA Civ 1139</i>	CA	<i>Claimant's RED judgment not appealed.</i>	9/11/07	RED	<i>AL Immigration; Health</i>		GD	C
9.	<i>O'Brien v South Cambridgeshire DC [2007] EWHC 2919 (QB)</i>	HC	RED claim failed.	7/12/07	RED	Planning, LG		LA	C
10.	<i>Chavda & Ors, R (on the application of) v London Borough of Harrow [2007] EWHC 3064 (Admin)</i>	HC	DED claim succeeded.	20/12/07	DED	Social welfare; LG; Human rights	{Public Law Project}	LA - London	
11.	<i>R. (on the application of C) v Secretary of State for Justice Divisional Court [2008] EWHC 171 (Admin)</i>	HC	RED claim upheld.	8/2/08	RED	P&C	Children's Commissioner		P
12.	<i>Baker & Ors, R (on the application of) v Secretary of State for Communities & Local Government & Ors [2008] EWCA Civ 141</i>	CA	<i>Claimant's RED related appeal dismissed.</i>	28/2/08	RED	<i>Planning; LG</i>	<i>EHRC</i>	<i>GD LA - London</i>	C
13.	<i>R. (on the application of HSMP Forum Ltd) v Secretary of State for the Home Department [2008] EWHC 664 (Admin)</i>	HC	RED claim succeeded	8/4/08	RED	Immigration		GD	
14.	R. (on the application of BAPIO Action Ltd) v Secretary of State for	HL	Original judgment re	30/4/08	RED	Health; AL; Employment		GD	

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	Neutral case citation	Heard by	Outcome re psed claim	Date	Race or disability	Subject	Involved	Class	WL status
	the Home Department [2008] UKHL 27		RED not appealed.						
15.	McCarthy & Ors v Basildon District Council [2008] EWHC 987 (Admin)	HC	RED claim failed.	9/5/08	RED [GED]	Planning; LG	EHRC	LA	P
16.	E v The Governing Body of JFS & Anor [2008] EWHC 1535 (Admin)	HC	RED claim upheld.	3/7/08	RED	Education; LG; Human Rights	The British Humanist Association The United Synagogue	GB	P
17.	Primrose, R (on the application of) v Secretary of State for Justice [2008] EWHC 1625 (Admin)	HC	RED claim dismissed	11/7/08	RED	Human rights; P&C		GD	
18.	<i>C, R (on the application of) v Secretary of State for Justice [2008] EWCA Civ 882</i>	CA	<i>RED claim upheld. [Rules quashed].</i>	<i>28/7/08</i>	<i>RED</i>	<i>P&C</i>	<i>Children's Commissioner EHRC</i>	<i>GD (claimant appealed)</i>	<i>C</i>
19.	Kaur & Shah, R (on the application of) v London Borough of Ealing & Anor [2008] EWHC 2062 (Admin)	HC	RED claim upheld. [Decision quashed.]	29/7/08	RED	LG	{Public Law Project} EHRC	LA -London	C
20.	R. (on the application of Rutter) v Stockton on Tees BC[2008] EWHC 2651 (Admin)	HC	DED claim failed.	3.10.08	DED	Social welfare; LG		LA	
21.	<i>O'Brien & Ors v South Cambridgeshire District Council [2008] EWCA Civ 1159</i>	CA	<i>Claimant's RED appeal dismissed.</i>	<i>24/10/08</i>	<i>RED</i>	<i>Planning; LG</i>		<i>LA (claimant appealed)</i>	

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	Neutral case citation	Heard by	Outcome re psed claim	Date	Race or disability	Subject	Involved	Class	WL status
22.	Brown, R (on the application of) v Secretary of State for Work and Pensions [2008] EWHC 3158 (Admin)	HC	DED, main claim, rejected.	18/12/08	RED DED [GED]	Postal services; AL	EHRC [Royal Mail Group Ltd] [Post Office Ltd]	GD	C
23.	Domb & Ors, R (on the application of) v London Borough of Hammersmith and Fulham [2008] EWHC 3277 (Admin)	HC	DED & RED claims failed.	19/12/08	RED DED	LG; Social welfare	{Public Law Project}	LA - London	C
24.	<i>R (on the application of McCarthy) v Basildon District Council & Ors [2009] EWCA Civ 13</i>	CA	<i>Claimant's RED & DED appeal failed.</i>	22/1/09	RED DED	<i>Planning; Human rights</i>	EHRC	LA	
25.	R. (on the application of Isaacs) v Secretary of State for Communities and Local Government [2009] EWHC 557	HC	Claimants' RED appeal failed.	26/1/09	RED	Planning		GD	C
26.	R. (on the application of B) v DPP Divisional Court [2009] EWHC 106 (Admin)	HC	DED claim upheld but not considered relevant.	27/1/09	DED	Mental health; Criminal procedure	EHRC	GD	C
27.	Servier Laboratories Ltd, R (on the application of) v National Institute for Health & Clinical Excellence & Ors [2009] EWHC 281 (Admin)	HC	RED & DED claim rejected.	19/2/09	RED DED	Health	[The Alliance for Better Bone Health] [The National	NDPB	P

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	Case citation	Decision			Class of case		Others/defendant class Involved: Intervener [interested party] {other}		Case status
	Neutral case citation	Heard by	Outcome re psed claim	Date	Race or disability	Subject	Involved	Class	WL status
							Osteoporosis Society]		
28.	AM, R (on the application of) v The City Council & Anor [2009] EWHC 688 (Admin) ⁶¹	HC	DED and overall claim dismissed.	2/3/09	DED	Health; Social security; LG	{Public Law Project} [The University]	LA	
29.	McDonald, R (on the application of) v London Borough of Kensington and Chelsea [2009] EWHC 1582 (Admin)	HC	Application for judicial review failed.	5/3/09	DED	Social welfare	{Disability Law Service}	LA - London	P
30.	Meany & Ors, R (on the application of) v Harlow District Council [2009] EWHC 559 (Admin)	HC	Claim succeeded. [Budget decisions were quashed.]	9/3/09	RED DED [GED]	LG	{Public Law Project}	LA - London	C
31.	R (on the application of JL (Child) v Islington LBC [2009] EWHC 458 (Admin)	HC	DED claim succeeded.	12/3/09	DED	Social welfare; LG	[Council for Disabled Children]	LA - London	
32.	Harrison, R (on the application of) v Secretary of State for Health & Ors [2009] EWHC 574 (Admin)	HC	Claim dismissed.	23/3/09	DED	Health; Legislation; Human rights	{Disability Law Service} EHRC [4 separate interested	GD	

⁶¹ Birmingham City Council

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	Case citation	Decision			Class of case		Others/defendant class Involved: Intervener [interested party] {other}		Case status
	Neutral case citation	Heard by	Outcome re psed claim	Date	Race or disability	Subject	Involved parties] ⁶²	Class	WL status
33.	R (on the application of Brooke) v Secretary of State for Justice [2009] EWHC 1396 (Admin)	HC	Claim dismissed.	15/5/09	RED	P&C; Human rights		GD	
34.	Holland & Anor, R (on the application of) v Secretary of State for Communities & Local Government & Anor [2009] EWHC 2161 (Admin) ⁶³	HC	Application failed.	19/6/09	RED	Planning; LG		GD; LA	
35.	<i>E, R (on the application of) v Governing Body of JFS & Ors [2009] EWCA Civ 626</i>	HC	<i>Claimant's RED claim not the subject of the appeal.</i>	25/6/09	RED	Education	<i>The British Humanist Association; The United Synagogue [4 interested parties]⁶⁴</i>	GB	C
36.	Harris, R (on the application of) v Haringey [2009] EWHC 2329 (Admin)	HC	Claim failed	14/7/09	RED	Planning; LG	[Grainger Seven Sisters Ltd] [Northumberland & Durham	LA - London	P

⁶² Interested parties: [Wakefield District PCT], [Wakefield Metropolitan District Council],[Islington Primary Care Trust] ,[Islington London Borough Council]

⁶³ Taunton Deane Borough Council

⁶⁴ Interested parties: [London Borough of Brent] [The Office of the Schools Adjudicator] [2 individuals]

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	Case citation	Decision			Class of case		Others/defendant class Involved: Intervener [interested party] {other}		Case status
	Neutral case citation	Heard by	Outcome re psed claim	Date	Race or disability	Subject	Involved	Class	WL status
							Property Trust Ltd.]		
37.	Lunt, R (on the application of) v Liverpool City Council & Anor [2009] EWHC 2356 (Admin)	HC	DED claim succeeded.	31/7/09	DED	AL; LG; Road traffic; Human rights	EHRC	LA	
38.	<i>Domb & Ors, R (on the application of) v London Borough of Hammersmith and Fulham & Ors [2009] EWCA Civ 941</i>	CA	<i>Claimants' appeal dismissed.</i>	8/9/09	RED DED [GED]	<i>Social welfare; LG</i>	{Public Law Project} EHRC	LA – London	C
39.	London Secure Services Ltd, R (on the application of) v The Youth Justice Board [2009] EWHC 2347 (Admin)	HC	Applications failed.	29/9/09	DED [GED]	P&C; Human rights; AL	{Howard League for Penal Reform}	NDPB	
40.	E, R (on the application of) v Governing Body of JFS & Anor (Rev 3) [2009] UKSC 1⁶⁵	SC	RED judgment not appealed.	14/10/09	RED	Legal advice and funding; Civil procedure		GB	
41.	A v North Somerset Council [2009] EWHC 3060 (Admin)	HC	DED claim rejected.	5/11/09	RED DED	Education		LA	
42.	Boyejo & Ors, R (on the application of) v Barnet London Borough Council [2009] EWHC 3261 (Admin)	HC	DED claim upheld. [Decision	15/12/09	DED	LG; Housing		LA - London	

⁶⁵ Three appellants: 1) JFS a voluntary aided maintained comprehensive school. 2) The Governing Body of JFS and its independent admission appeal panel. 3) The United Synagogue.

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	Neutral case citation	Heard by	Outcome re psed claim	Date	Race or disability	Subject	Involved	Class	WL status
			quashed]						
43.	E, R (on the application of) v Governing Body of JFS & Anor [2009] UKSC 15	SC	RED 3/7/08 judgment discussed but not appealed.	16/12/09	RED	Education	5 interveners⁶⁶	School (claimant appealed)	C
44.	British Gurkha Welfare Society & Others v Ministry of Defence [2010] EWHC 3 (Admin)	HC	RED claim failed.	11/1/10	RED	Pensions; Human Rights; Armed forces		GD	C
45.	The Equality & Human Rights Commission), R (on the application of) v Secretary of State for Justice Secretary of State for the Home Department [2010] EWHC 147 (Admin)	HC	First RED & DED claim upheld but second rejected. [Declaration]	17/2/10	RED DED	P&C; AL		GD	
46.	Gill, R (on the application of) v Secretary of State for Justice [2010] EWHC 364 (Admin)	HC	DED claim upheld (declaration). ⁶⁷	26/2/10	DED	P&C		GD	
47.	R (on the application of MS) v Oldham MBC [2010] EWHC 802 (Admin)	HC	Claimant's appeal dismissed.	11/3/10	DED	Social Welfare		LA	C

⁶⁶ 5 interveners: The Board of Deputies of British Jews; the EHRC; the United Synagogue; the British Humanist Association; the Secretary of State for Children, Schools and Families.

⁶⁷ See para. 88.

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	Neutral case citation	Heard by	Outcome re psed claim	Date	Race or disability	Subject	Involved	Class	WL status
48.	007 Taxis Stratford Ltd v Stratford-On-Avon District Council [2010] EWHC Admin 1344	HC	Claim failed.	9/6/10	RED DED	Road traffic; LG		LA	
49.	<i>Harris, R (on the application of) v The London Borough of Haringey [2010] EWCA Civ 703</i>	CA	<i>RED claim upheld. [Planning permission quashed]</i>	22/6/10	RED	<i>Planning; LG</i>	<i>EHRC</i>	<i>LA – London</i>	
50.	<i>Brent LBC v Corcoran [2010] EWCA Civ 774</i>	CA	<i>Original claimants' RED & DED claims failed.</i>	8/7/10	RED	<i>Landlord & tenant; LG</i>		<i>AL – London</i>	<i>C</i>
51.	Maxwell, R (on the application of) v The Office of the Independent Adjudicator & Anor [2010] EWHC 1889 (Admin)	HC	Claim dismissed	23/7/10	DED	Education, civil procedure	[The University of Salford]	Company (LG)	
52.	Medical Justice, R (on the application of) v Secretary of State for the Home Department (Rev 1) [2010] EWHC 1925 (Admin)	HC	RED & DED claims succeeded. [Part of policy quashed]	26/7/10	RED DED	Immigration	{Public Law Project}	GD	
53.	R (on the application of Broster) v Wirral MBC [2010] EWHC 3086 (Admin)	HC	Application refused.	12/10/10	DED	Social welfare; LG	[Salisbury Independent Living]	LA	
54.	<i>Pieretti v London Borough of</i>	CA	<i>Claimant's</i>	12/10/10	DED	<i>Housing; LG</i>		<i>LA –</i>	<i>C</i>

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	Neutral case citation	Heard by	Outcome re psed claim	Date	Race or disability	Subject	Involved	Class	WL status
	<i>Enfield [2010] EWCA Civ 1104</i>		<i>DED appeal succeeded. [Decision quashed]</i>					<i>London</i>	
55.	<i>The Queen on the Application of the British Gurkha Welfare Society & Others v Ministry of Defence [2010] EWCA Civ 1098</i>	CA	<i>Application failed.</i>	13/10/10	RED	<i>Pensions; Armed forces; Human rights</i>		<i>GD (claimant appealed)</i>	
56.	<i>McDonald, R (on the application of) v Royal Borough of Kensington & Chelsea [2010] EWCA Civ 1109</i>	CA	<i>DED claim failed.</i>	13/10/10	DED	<i>Social welfare; LG</i>	{Disability Law Service} Age UK	<i>LA – London (claimant appealed)</i>	
57.	<i>RS & Ors (Zimbabwe - AIDS) Zimbabwe CG [2010] UKUT 363 (IAC)</i>	UT (IAC)	<i>DED claims failed.⁶⁸</i>	14/10/10	DED	<i>Immigration; Human rights; Health</i>	{Refugee and Migrant Justice}	GD	
58.	<i>H, R (on the application of) v Birmingham City Council [2010] EWHC 3754 (Admin)</i>	HC	<i>DED claim failed.</i>	7/12/10	DED	<i>Social welfare; LG</i>		LA	
59.	<i>Public Interest Lawyers v Legal Services Commission [2010] EWHC 3277 (Admin)</i>	HC	<i>DED claim failed.</i>	13/12/10	DED	<i>Legal advice & funding; Public procurement</i>		GD Executive Agency	
60.	<i>Cordant Group Plc, R (on the application of) v Secretary of State for Business, Innovation and Skills</i>	HC	<i>RED claim failed.</i>	30/12/10	RED	<i>AL; Employment; GA</i>	[HM Treasury]	GD	C

⁶⁸ Interesting assessment of the UT's powers to hear DED claims.

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	Neutral case citation	Heard by	Outcome re psed claim	Date	Race or disability	Subject	Involved	Class	WL status
	& Anor [2010] EWHC 3442 (Admin)								
61.	Hajrula, R (On the Application Of) v London Councils [2011] EWHC 448 (Admin)	HC	psed claims succeeded. [Declaration & decision quashed]	28/1/11	RED DED [GED]	LG		Joint LA Body London	
62.	Luton Borough Council & Nottingham City Council & Ors, R (on the application of) v Secretary of State for Education [2011] EWHC 217 (Admin)	HC	pseds claims upheld	11/2/11	RED DED [GED]	AL; LG; Education		GD	C
63.	<i>R (on the application of 007 Stratford Taxis Ltd) v Stratford on Avon DC [2011] EWCA Civ 160</i>	CA	<i>Claimant's DED appeal failed.</i>	23/2/11	DED	<i>Road traffic; LG</i>		LA	
64.	BE, R (on the application of) v Secretary of State for the Home Department [2011] EWHC 690 (Admin)	HC	DED claim upheld. ⁶⁹	23/3/11	DED	Immigration		GD	
65.	Rahman, R (on the application of) v Birmingham City Council [2011] EWHC 944 (Admin)	HC	RED, DED and GED claims upheld.	31/3/11	RED DED [GED]	LG; Legal advice & funding	{Public Law Project}	LA	
66.	W, R (on the application of) v	HC	DED claim	19/5/11	DED	Social welfare;		LA	C

⁶⁹ No separate declaration issued re section 49A because the detention of the prisoner was declared unlawful on other grounds, and relief and damages were awarded on those other grounds (see para. 183 -184).

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	Neutral case citation	Heard by	Outcome re psed claim	Date	Race or disability	Subject	Involved	Class	WL status
	Birmingham City Council [2011] EWHC 1147 (Admin)		upheld.			LG			
67.	Robin Murray & Co, R (on the application of) v The Lord Chancellor [2011] EWHC 1528 (Admin)	HC	Application dismissed.	16/6/11	DED	AL; GA		GD	
68.	G v St Gregory's Catholic Science College (Rev 1) [2011] EWHC 1452 (Admin)	HC	No finding re alleged RED breach.	17/6/11	RED [GED]	Education		College	
69.	McDonald, R (on the application of) v Royal Borough of Kensington and Chelsea [2011] UKSC 33	SC	Claimant's appeal dismissed.	6/7/11	DED	Social welfare; Human rights	{Disability Law Service} Age UK	LA (claimant appealed)	
70.	R. (on the application of English Speaking Board (International) Ltd) v Secretary of State for the Home Department [2011] EWHC 1788 (Admin)	HC	Partial success re RED claim.	12/7/11	RED	Immigration; AL; Education			
71.	<i>Barnsley Metropolitan Borough Council v Norton and others [2011] EWCA Civ 834</i>	CA	<i>Claimant's DED claim upheld.</i>	<i>21/7/11</i>	<i>DED</i>	<i>LG; Housing; Landlord and tenant</i>	<i>{Shelter, South Yorkshire}</i>		
72.	JG & Anor v Lancashire County Council [2011] EWHC 2295 (Admin)	HC	Application dismissed.	2/9/11	DED [GED]	Social welfare, LG		LA	
73.	Bailey & Ors v London Borough of Brent Council [2011] EWHC 2572 (Admin)	HC	Claim dismissed.	13/10/11	RED	LG; Libraries		LA - London	C

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74.	Child Poverty Action Group v Secretary of State for Work & Pensions [2011] EWHC 2616 (Admin)	HC	Claim failed.	13/10/11	RED DED [GED]	Social security; Housing; LG	{Child Poverty Action Group}	GD	C
75.	<i>IA, R (on the application of) v The Secretary of State for Communities and Local Government & Anor [2011] EWCA Civ 1253</i>	CA	<i>Claimant's appeal dismissed.</i>	2/11/11	DED	<i>Planning; LG; Civil procedure</i>		GD	
76.	The Sefton Care Association & Ors, R (on the application of) v Sefton Council [2011] EWHC 2676 (Admin)	HC	DED claim failed.	9/11/11	DED	Social welfare		LA	
77.	JM & NT, R (on the application of) v Isle of Wight Council [2011] EWHC 2911 (Admin)	HC	DED claim succeeded.	11/11/11	DED	Social welfare		LA	
78.	Green, R (on the application of) v Somerset County Council [2011] EWHC 2687 (Admin)	HC	PSED – disability, age & gender claims upheld.	16/11/11	Disability [Age] [Gender]	Libraries, LG			
79.	<i>Medical Justice, R (on the application of) v Secretary of State for the Home Department [2011] EWCA Civ 1710</i>	CA	<i>Decision for claimant upheld. Respondent's appeal rejected.</i>	22/11/11	RED DED	<i>Immigration</i>	{Public Law Project}	GD	
80.	East Midlands Care Ltd, R (on the	HC	DED claim	2/12/11	DED	Social welfare		LA	

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	Neutral case citation	Heard by	Outcome re psed claim	Date	Race or disability	Subject	Involved	Class	WL status
	application of) v Leicestershire County Council [2011] EWHC 3096 (Admin)		failed.						
81.	Staff Side of the Police Negotiating Board & Ors, R (on the application of) v Secretary of State for Work and Pensions & Anor [2011] EWHC 3175 (Admin)	HC	Claimant's application failed.	2/12/11	RED [GED]	Pensions: GA		GD	C
82.	RP, R (on the application of) v London Borough of Brent [2011] EWHC 3251 (Admin)	HC	PSED application failed.	7/12/11	DED	Social welfare; civil procedure	{Harrow Law Centre}	LA - London	
83.	Medhurst v Secretary of State for Communities and Local Government [2011] EWHC 3576 (Admin)	HC	Claim dismissed.	8/12/11	RED	Planning; Human rights; LG	EHRC	GD	
84.	<i>Bailey & Ors, R (on the application of) v London Borough of Brent Council & Ors [2011] EWCA Civ 1586</i>	CA	<i>Claimant's appeal failed.</i>	19/12/11	RED	LG; Libraries	EHRC	LA – London (claimant appealed)	C
85.	<i>R. (on the application of Rajput) v Waltham Forest LBC [2011] EWCA Civ 1577</i>	CA	<i>Claimant's appeal failed.</i>	20/12/11	RED DED	Social welfare; LG		LA – London	
86.	<i>R (Tiller) v East Sussex County Council [2011] EWCA Civ 1577</i>	CA	<i>Claimant's appeal failed.</i>	20/12/11	RED DED	Social welfare; LG		LA	

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	Neutral case citation	Heard by	Outcome re psed claim	Date	Race or disability	Subject	Involved	Class	WL status
87.	D and S, R (on the application of) v Manchester City Council [2012] EWHC 17 (Admin)	HC	Application dismissed.	12/1/12	DED	Social welfare; LG		LA	N
88.	Hurley and Moore, R (on the application of) v Secretary of State for Business Innovation & Skills [2012] EWHC 201 (Admin)	HC	RED & DED claim upheld. [Declaration granted] ⁷⁰	17/2/12	RED DED	Education; Human rights		GD	C
89.	R(on the application of Burton) v Secretary of State for Communities and Local Government [2012] EWHC 3254 (Admin)	HC	Application dismissed.	27/3/12	RED	Planning	N/A	GD	
90.	NM, R (on the application of) v London Borough of Islington & Ors [2012] EWHC 414 (Admin)	HC	Claim dismissed.	29/2/12	Disability related [CCA] ⁷¹	Social welfare; P&C; LG	[Northamptonshire County Council] [The Parole Board]	LA - London	
91.	Barrett, R (on the application of) v London Borough of Lambeth [2012] EWHC 4557 (Admin)	HC	DED claim upheld in part & dismissed in part.	29/2/12	DED	LG; Charities; Mental health		LA - London	
92.	Williams & Anor, R (on the	HC	psed claims	3/4/12	RED	LG; Libraries		LA	

⁷⁰ Paras. 99 & 103: Decision not quashed.

⁷¹ CCA =Community Care Assessment.

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	Neutral case citation	Heard by	Outcome re psed claim	Date	Race or disability	Subject	Involved	Class	WL status
	application of) v Surrey County Council [2012] EWHC 867 (QB)		succeeded.		DED [GED]				
93.	HA (Nigeria), R (on the application of) v Secretary of State for the Home Department (Rev 1) [2012] EWHC 979 (Admin)	HC	RED & DED DED claim upheld.	17/4/12	RED DED	Immigration; Mental health; Human rights; GA		GD	
94.	Essex County Council, R (on the application of) v Secretary of State for Education [2012] EWHC 1460 (Admin)	HC	Failure to fully discharge equality duties.	17/5/12	RED DED	Education; LG; AL		GD	
95.	Wakil (t/a Orya Textiles) & Ors, R (on the application of) v London Borough of Hammersmith & Fulham [2012] EWHC 1411 (QB)	HC	RED claim failed.	25/5/12	RED	Planning; LG; Environment	[Orion Shepherd's Bush Ltd]	LA - London	C
96.	S v Secretary of State for the Home Department [2012] EWHC 1939 (QB)	HC	Declined to make an RED ruling.	16/7/12	RED	Immigration; Human Rights; Mental health		GD	
97.	Diedrick, R (On the Application of) v Hampshire Constabulary & Ors [2012] EWHC 2144 (Admin)	HC	Permission refused. RED claim failed.	26/7/12	RED	Police	[StopWatch] [Association of Chief Police Officers]	Police	
98.	D, R (on the application of) v Secretary of State for the Home Department [2012] EWHC 2501 (Admin)	HC	PSED – disability claim upheld.	20/8/12	DED	Immigration; Human rights; Mental health		GD	

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	Neutral case citation	Heard by	Outcome re psed claim	Date	Race or disability	Subject	Involved	Class	WL status
99.	Keyu & Ors v Secretary of State for Foreign & Commonwealth Affairs & Anor (Rev 1) [2012] EWHC 2445 (Admin)	HC	RED claim failed.	4/9/12	RED	Armed forces; Human rights		GD	C
100.	EH, R (on the application of) v Secretary of State for the Home Department [2012] EWHC 2569 (Admin)	HC	RED claim rejected.	27/9/12	RED	Immigration; Human rights; Mental health		GD	N
101.	R. (on the application of RB) v Devon CC [2012] EWHC 3597 (Admin)	HC	Claim succeeded. [Declaration]	19/10/12	RED DED	LG; Social welfare; Public procurement		LA	
102.	AJ & Anor v Calderdale Borough Council [2012] EWHC 3552 (Admin)	HC	DED claim not decided because decision quashed on other grounds.	22/10/12	DED related: (Disabled persons; Residential acc.)	Public procurement; LG; Social welfare	[Calderdale Primary Care Trust]	LA	
103.	Ali v London Borough of Newham [2012] EWHC 2970 (Admin)	HC	DED claim upheld.	30/10/12	DED	Social welfare: LG		LA - London	
104.	South West Care Homes Ltd & Ors, R (on the application of) v Devon County Council & Anor [2012] EWHC 2967 (Admin)	HC	PSED disability claim upheld. [Decision quashed]	7/11/12	PSED - disability	Social welfare; LG	EHRC	LA	

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	Neutral case citation	Heard by	Outcome re psed claim	Date	Race or disability	Subject	Involved	Class	WL status
105.	Coleman, R (on the application of) v The London Borough of Barnet Council & Anor [2012] EWHC 3725 (Admin)	HC	Claim failed.	21/12/12	RED DED	Planning; LG	[The Trustees and Governors of Etz Chaim Primary School]	LA - London	
106.	Zacchaeus 2000 Trust, R (on the application of) v Secretary of State for Work and Pensions [2013] EWHC 233 (Admin)	HC	Application dismissed.	15/2/13	RED DED [GED] [children]	Social security; Housing; Landlord & tenant		GD	C
107.	Buckley & Ors, R (on the application of) v Sheffield City Council [2013] EWHC 512 (Admin)	HC	Claim failed.	13/3/13	PSED – race	Social security; LG		LA	
108.	Buckinghamshire County Council & Ors, R (on the application of) v Secretary of State for Transport [2013] EWHC 481 (Admin)	HC	PSED race ground was dismissed.	15/3/13	PSED – race	Transport; Environment; EU; AL	[High Speed Two Ltd]	GD	C
109.	Copson, R (on the application of) v Dorset Healthcare University NHS Foundation Trust [2013] EWHC 732 (Admin)	HC	Claim dismissed.	28/3/13	PSED - disability ⁷²	Mental health; LG	[NHS Dorset]	NHS Trust	
110.	Bracking & Ors, R (on the application of) v Secretary of State for Work and Pensions [2013]	HC	PSED disability claim failed.	24/4/13	PSED - disability ⁷³	Social welfare; GA	EHRC	GD	

⁷² Consultation; Mental health Trusts

⁷³ Consultation; Disabled Persons; Independent Living Funds

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	Neutral case citation	Heard by	Outcome re psed claim	Date	Race or disability	Subject	Involved	Class	WL status
	EWHC 897 (Admin)								
111.	Branwood, R (On the Application Of) v The Secretary of State for Communities And Local Government [2013] EWHC 1024 (Admin)	HC	PSED claim failed.	26/4/13	PSED - disability ⁷⁴	LG; Social welfare	[The Secretary of State for Communities and Local Government]	GD	
112.	T, R (on the application of) v Secretary of State for Justice & Anor [2013] EWHC 1119 (Admin)	HC	PSED claim failed.	3/5/13	PSED - disability ⁷⁵	Criminal procedure		GD	
113.	R(on the application of MN) v Hackney LBC [2013] EWHC 1205 (Admin)	HC	Claim dismissed.	10/5/13	PSED - disability	LG; Immigration; Social welfare; HR	{National Youth Advisory Service}	LA - London	C
114.	South Tyneside Care Home Owners Association & Ors, R (on the application of) v South Tyneside Council [2013] EWHC 1827 (Admin)	HC	PSED disability related claim upheld. [Decision quashed]	28/6/13	PSED - disability ⁷⁶	Social welfare; LG		LA	
115.	R. (on the application of Drammeh) v Secretary of State for the Home Department [2013] EWHC 2980	HC	No decision on alleged PSED breach.	19/7/13	PSED - disability ⁷⁷	Immigration		GD	

⁷⁴ Consultation; Disability

⁷⁵ [Vulnerable defendants]

⁷⁶ [Disabled persons; Elderly persons]

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	(Admin)								
116.	MA & Ors, R (on the application of) v Secretary of State for Work and Pensions & Ors [2013] EWHC 2213 (QB)	HC	PSED – disability claim failed	30/7/13	RED Disability related ⁷⁸	Social security; Housing	EHRC Shelter [Birmingham City Council]	GD	C
117.	<i>Zacchaeus 2000 Trust, R (on the application of) v Secretary of State for Works and Pensions [2013] EWCA Civ 1202</i>	CA	<i>Claimant’s appeal dismissed.</i>	31/7/13	<i>[PSED: race, disability & poverty]</i>	<i>Social security; Legislation; Social welfare; Landlord & tenant</i>		GD	C
118.	D, R (On the Application Of) v Worcestershire County Council [2013] EWHC 2490 (Admin)	HC	PSED – disability claim failed	9/8/13	PSED - disability ⁷⁹	Social welfare; LG; Health		LA	
119.	Antoniou, R (on the application of) v Central and North West London NHS Foundation Trust & Ors [2013] EWHC 3055 (Admin)	HC	PSED claim failed.	10/10/13	PSED - disability ⁸⁰	Administration of Justice; Health; Human rights; Mental health		NHS Trust	C
120.	<i>Stuart Bracking & Ors v Secretary of State for Work and Pensions [2013] EWCA Civ 1345</i>	CA	<i>Claimant’s PSED disability</i>	6/11/13	<i>PSED - disability⁸¹</i>	<i>LG; AL</i>	<i>EHRC</i>	<i>GD (claimant appealed)</i>	C

⁷⁷ [Ill-health; Life sustaining treatment; mental illness]

⁷⁸ [Disabled persons]

⁷⁹ [Consultation; Adult social care; Community care; Disabled persons]

⁸⁰ [Right to life; Suicide]

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	Neutral case citation	Heard by	Outcome re psed claim	Date	Race or disability	Subject	Involved	Class	WL status
			<i>claim succeeded. [Decision quashed]</i>						
121.	<i>Members of the Committee of Care North East Northumberland (R on the application of) v Northumberland County Council & Anor [2013] EWCA Civ 1740</i>	CA	<i>Claim failed</i>	27/11/13	PSED - disability ⁸²	Social welfare; LG		LA (claimant appealed)	C
122.	LH & CM, R (on the application of) v Shropshire Council [2013] EWHC 4222 (Admin)	HC	<i>Claim dismissed.</i>	27/11/13	PSED - disability ⁸³	LG; Mental health		LA	P
123.	<i>Das, R (on the application of) v Secretary of State for the Home Department & Ors [2014] EWCA Civ 45</i>	CA	<i>Appeal allowed.</i> ⁸⁴	28/1/14	PSED - disability ⁸⁵	Immigration; Mental health; Damages	MIND Medical Justice	GD	C
124.	S, R (on the application of) v Secretary of State for the Home Department [2014] EWHC 50	HC	RED & DED claims upheld.	28/1/14	RED DED ⁸⁶	Immigration; Mental health; Human rights	[Nestor Prime Care Service Ltd.]	GD	

⁸¹ [Consultation; Disabled persons; Independent Living Fund(s)]

⁸² [Care homes; Fees; residential accommodation]

⁸³ [Closure; Consultation; Day centres]

⁸⁴ Matter remitted to the Administrative Court.

⁸⁵ [Mental disorder; Psychiatric evidence]

⁸⁶ [Medical treatment; Mental disorder]

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	(Admin)								
125.	Secretary of State v YB [2014] UKUT 80 (AAC)	UT (ACC)	Breach of DED upheld but claimant lost out.	7/2/14	DED	Exercise of power; Statutory interpretation		GD	
126.	Hamnett v Essex County Council [2014] EWHC 246 (Admin)	HC	Application failed.	13/2/14	PSED - disability	Road traffic; AL; Civil procedure		LA	A
127.	<i>MA & Ors, R (on the application of) v The Secretary of State for Work and Pensions [2014] EWCA Civ 13</i>	CA	<i>Appeal dismissed.</i>	21/2/14	PSED - disability ⁸⁷	<i>Social security; LG; Human rights</i>	<i>EHRC</i>	<i>GD (claimant appealed)</i>	<i>C</i>
128.	<i>LH, R (on the application of) v Shropshire Council [2014] EWCA Civ 404</i>	CA	<i>Claimant's PSED appeal failed.</i>	4/4/14	PSED - disability ⁸⁸	<i>Social welfare; LG; Mental health</i>		<i>LA (claimant appealed)</i>	
129.	R. (on the application of Blake) v Waltham Forest LBC [2014] EWHC 1027 (Admin)	HC	Claimant's PSED disability claim upheld. [Declaration & decision quashed]	7/4/14	PSED disability	Licensing; Local Government			
130.	R. (on the application of Refugee	HC	Claimant's	9/4/14	PSED -	Immigration;		GD	

⁸⁷ [Disabled persons; Reduction of benefits]

⁸⁸ [Closure; Community centres; Consultation; Learning disabilities]

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	Action) v Secretary of State for the Home Department [2014] EWHC 1033 (Admin)		PSED claim not adjudicated. ⁸⁹		disability	Government administration ; Social welfare			
131.	R. (on the application of Bapio Action Ltd) v Royal College of General Practitioners [2014] EWHC 1416 (Admin)	HC	Claimant's PSED claim failed.	10/4/14	PSED – race	Health; Professions		Royal College (ca)	
132.	R. (on the application of IS) v Director of Legal Aid Casework[2014] EWCA Civ 886	CA	Claimant's appeal allowed. [Limited PCO granted]	9/5/14	PSED - disability	Legal advice & funding; Civil procedure	{Public Law Project}	GD Executive Agency	
133.	MD, R (On the Application Of) v Secretary of State for the Home Department [2014] EWHC 2249 (Admin)	HC	Claimant's PSED claim failed.	8/7/14	Disability related: Mental health	Immigration; Human rights; Mental health		GD	
134.	Sumpster, R (on the application of) v Secretary of State for Work and Pensions [2014] EWHC 2434 (Admin)	HC	PSED – disability claim failed.	22/7/14	PSED - disability	Social security		GD	A

⁸⁹ Para. 162: 'A decision on this issue involves seeking to reconcile potentially conflicting decisions of two courts of which Elias LJ and McCombe LJ were in each case members. In the light of my other conclusions it is not necessary for me to do so, and I prefer to leave the question for a case in which it requires resolution.' Claim succeeded on other grounds.

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135.	<i>Kanu v London Borough of Southwark [2014] EWCA Civ 1085</i>	CA	<i>Council successfully appealed against a court's PSED finding.⁹⁰</i>	29/7/14	PSED - disability ⁹¹	<i>Housing; LG</i>	{ <i>Cambridge House Law Centre</i> }	<i>LA – London (claimant appealed)</i>	A
136.	Winder & Ors, R (on the application of) v Sandwell MBC [2014] EWHC 2617 (Admin)	HC	Decision declared unlawful.	30/7/14	PSED – race ⁹²	LG; Social security	{Child Poverty Action Group} EHRC	LA	
Three Welsh judgments									
1	R. (on the application of Watkins-Singh) v Aberdare Girls' High School Governors [2008] EWHC 1865 (Admin) QBD (Admin)	HC	RED claim upheld.	29/7/08	RED	Education; Human Rights		School	N
2	Barwick v Bridgend CBC [2009] EWHC 1723 (Admin)	HC	DED application dismissed.	10/7/09	DED	Social welfare		LA	
3	R. (on the application of West) v Rhondda Cynon Taff County BC [2014] EWHC 2134 (Admin)	HC	PSED race and disability claims failed.	23/5/14	PSED disability and race	Education		LA	

⁹⁰ Note: The Kanu Court of Appeal judgment considered by the Supreme Court in May 2015 and overturned. *Kanu v Southwark LBC [2015] UKSC 30*

⁹¹ Medical treatment; vulnerable adults;

⁹² Residence test

